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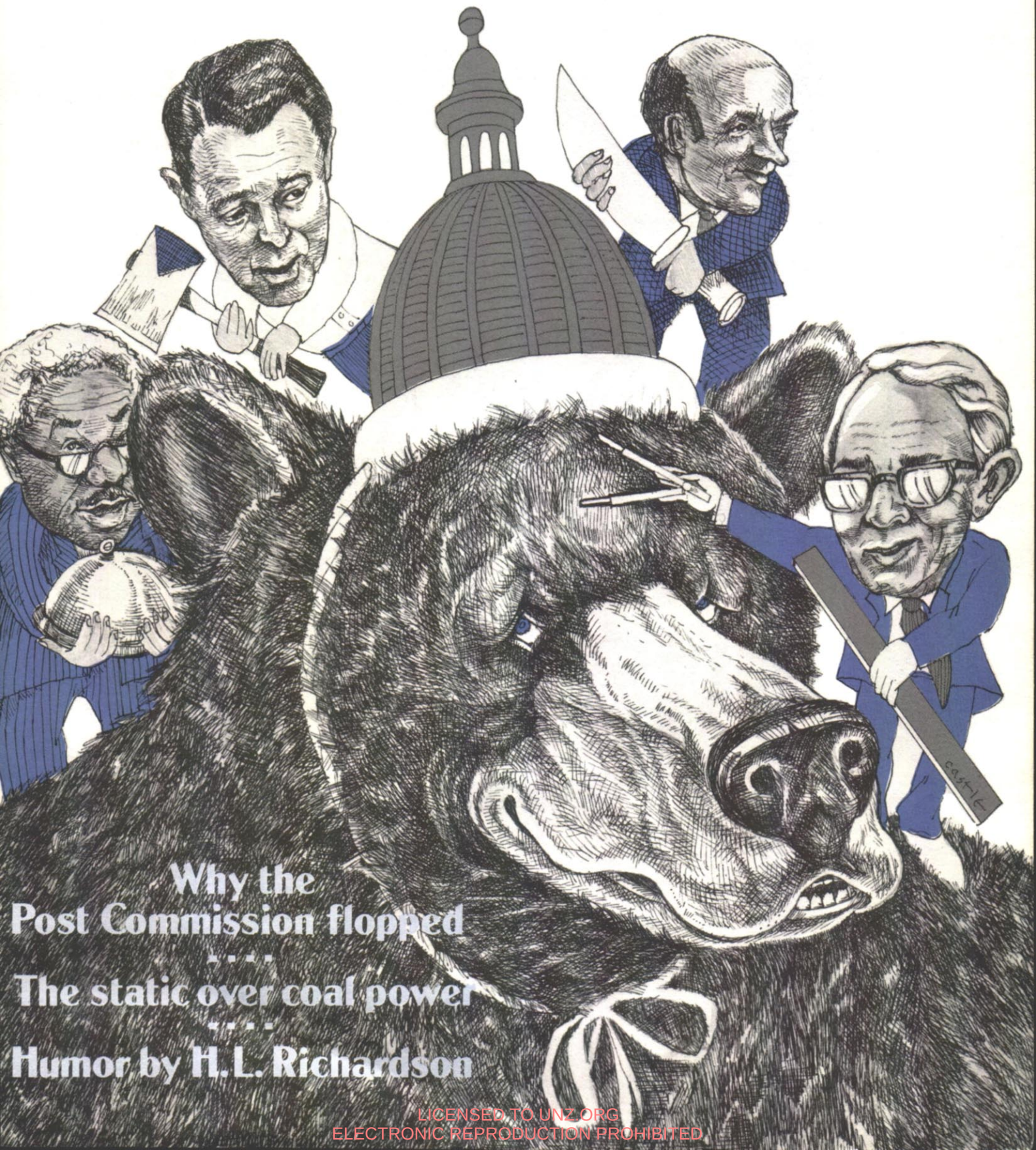
THE MONTHLY ANALYSIS OF STATE GOVERNMENT AND POLITICS



Why the Post Commission flopped

The static over coal power

Humor by H. L. Richardson

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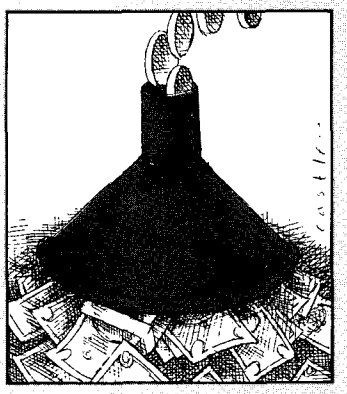
Personal

PERSPECTIVE

By Ed Salzman



Truth in contributions

The giving of a political-campaign contribution seems like such a simple act. The donor writes a check to a candidate's campaign fund, and the money is used to elect that candidate to office. Or is it?

How many times is that money diverted to another campaign? How often are there large surpluses after the election, with the money available for personal use by the candidate?

The state Fair Political Practices Commission has come up with a list of instances in which campaign funds were used for purposes other than that for which they were intended. In most cases, it probably didn't make any difference. The donors would have approved of the diversion or didn't really care what happened to the money. After all, campaign contributions are often given primarily for interest groups to remain in the good graces of incumbent officeholders.

Spurred by the commission's inquiry into this area, Assembly Speaker Leo T. McCarthy has come forth with a plan to prevent misuse of campaign funds by candidates. Under the speaker's plan, surplus campaign funds could only be used in the following ways: They could be returned to the contributors, retained for use in future election campaigns, donated to charitable organizations, or contributed to campaigns of other candidates or ballot measures.

McCarthy, as the leader of Democratic forces in the Assembly, has an extraordinary interest in the FPPC investigation. He collects large sums of money and distributes the proceeds to Democratic candidates for office. That's his way of keeping friendly Democrats in the Assembly and thus preserving his powerful post.

The McCarthy proposal would eliminate the most flagrant abuse, the conversion of campaign funds to personal use. (There have even been instances in the past when defeated candidates have raised funds to build a surplus that would amount to a consolation prize.) It would eliminate the state of mind that has led some California politicians to view donations more as personal gifts than as campaign contributions.

The commission is going further than McCarthy, questioning whether surplus funds should be used for political purposes other than those for which they were originally granted. What's wrong with donations being used for the specific purpose for which they were obtained — and nothing else? From the politician's standpoint, what's wrong is that it would be more difficult for leaders of both parties to juggle funds and put the money behind the most needy colleagues. That's why McCarthy's bill makes it clear that a contribution can be shifted from campaign to campaign at the whim of the recipient.

If the McCarthy plan is enacted, contributors will be on notice these situations could still develop:

- A strong member of the Pro-Life organization might see his or her money given to a community abortion clinic.
- Funds given to one candidate may be given to another candidate detested by the donor.
- It is even possible that the donor might decide to run for office at the next election against the candidate to whom he or she made a donation. If the funds were retained in reserve for the next election, the donor would find the money being used against himself or herself.

California Journal

THE MONTHLY ANALYSIS
OF STATE GOVERNMENT AND POLITICS

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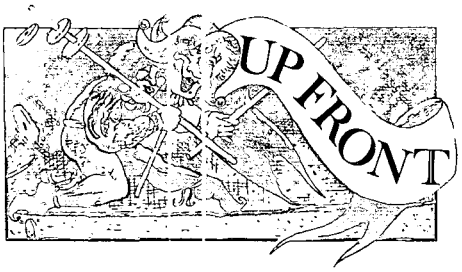

First order from the new General: "Don't call me general." That's the word spread through the state Department of Justice by Attorney General George Deukmejian. His predecessor, Evelle Younger, enjoyed being called "general" — probably because he held the rank twice, once from his military status and once from his state office. Deukmejian prefers "Duke."

Where are they now? Dwight (Speed) Geduldig, one-time state Director of Employment Development under Ronald Reagan, is a top staffer for Reagan's 1976 vice-presidential designate, Senator Richard Schweikert of Pennsylvania. John Quimby, the former San Bernardino assemblyman who looked near death only a few years ago, is now looking great and working, among other things, for alcoholism programs in Sacramento.

Now that Senator George Zenovich has cajoled an appellate judgeship out of Jerry Brown, several other lawyer-legislators are getting the same notion. Among them: Assembly Speaker pro Tempore John T. Knox of Richmond.

Just how much did local government lose in property tax revenues as a result of Proposition 13? State Controller Ken Cory, who sits on the state Board of Equalization, says his instincts tell him it was significantly less than the $7 billion advertised to the public.

Senate President pro Tempore James R. Mills asked the editorial board of 26 California newspapers with a combined circulation of 5.2 million to list the 10 most urgent problems facing the state. Only six papers with a combined circulation of less than one million responded. Next time, Mills will look elsewhere for advice.

Call for the Pink Panther: Some art work for a publication of the state Office of Planning and Research entered the Governor's Office and disappeared somewhere between Jacques Barzaghi and Jerry Brown. Call it the case of the purloined painting.

And when that case is solved, we'd appreciate it if someone in authority would nab the bandidos who have once again ripped off the *Journal's* typewriters, obviously objecting to the way the words come out.

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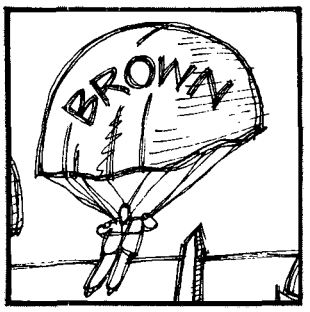

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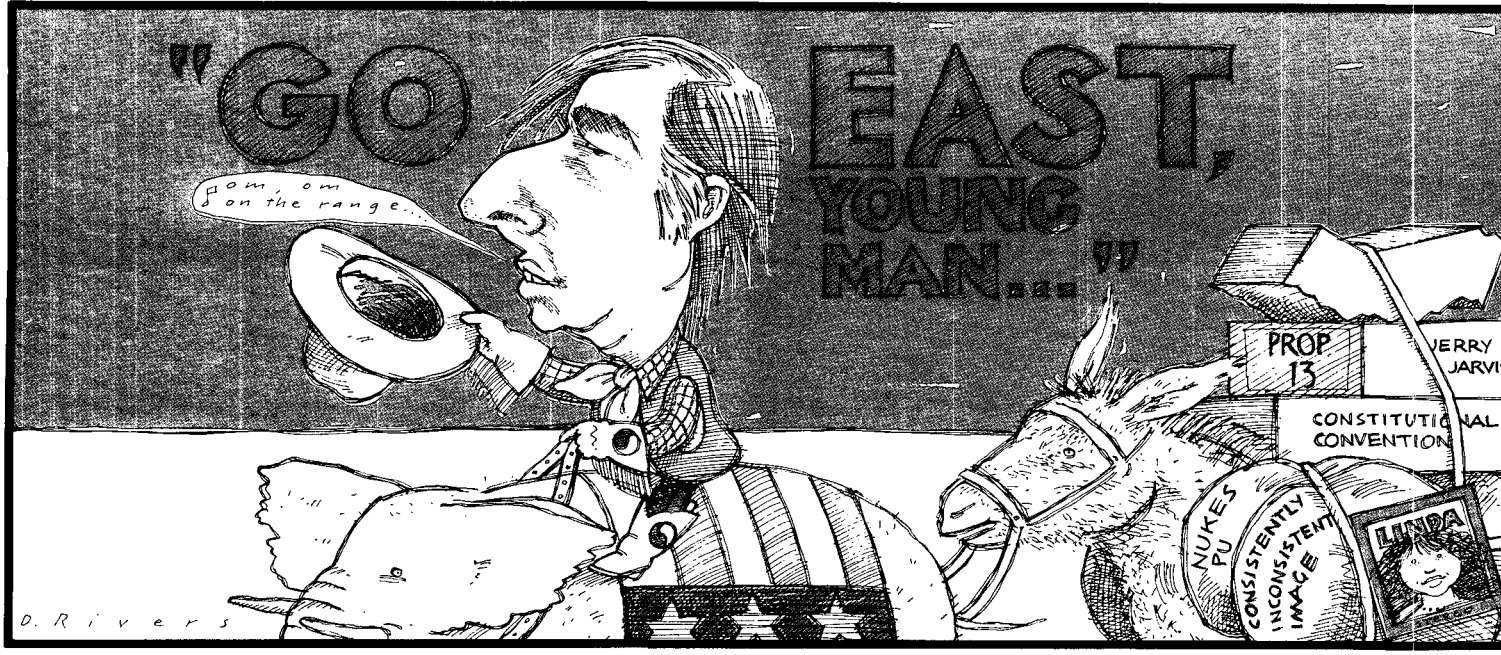

ILLUSTRATION BY DONNA RIVERS

HAWKER OF THE BUDGET—BALANCING ELIXIR FROM THE GOLDEN WEST

Can Jerry unseat Jimmy in the Democratic primaries?

By Ed Salzman

If Ronald Reagan and Jerry Brown face each other for the presidency after the 1980 conventions, you'll almost have to feel a bit sorry for Lieutenant Governor Mike Curb. As a party loyalist, he'd be supporting Reagan, his political mentor, to the hilt. But if Brown should win, Curb would become governor and automatically a potential presidential candidate in 1984 and beyond.

There isn't much doubt that Reagan and Brown are running again. Neither stopped the chase after falling short in 1976. The question now is whether either or both can win a nomination.

Reagan begins the 1980 campaign as the favorite and with only one major stumbling block, his age. (He would be 70 only a couple of weeks following his inauguration.) The field is crowded with the likes of John Connally, Phil Crane and Howard Baker, with Gerald Ford waiting in the wings for a call to duty. But if Reagan maintains his popularity with conservatives, keeps looking fit and doesn't make any blunders, he should not be denied on this third and last attempt. He has maintained his Citizens for the Republic organization in full swing during the past two years to make sure that he maintains maximum political momentum.

Brown has a pair of formidable mountains to conquer before grasping the Democratic gonfalon. He must sell himself in enough early primaries to eliminate the incumbent president, Jimmy Carter. And he must compete with Senator Ted Kennedy should the lone surviving son of the party's "royal family" choose to seek the presidency.

The odds on Reagan are short, and he can be expected to run a low-risk campaign. Brown must play the role of River City gambler, as he did with his proposal that a national constitutional convention be called, if necessary, to balance the federal budget. Politics is the art of taking advantage of opportunities, and Reagan's look much more promising than Brown's at this stage of the game.

Yet, Brown can win. Sitting presidents no longer have an automatic right to be renominated. The public is responding to the kind of fiscal radicalism Brown is peddling. Kennedy may choose to play a waiting game, and he may enter the contest too late — as Brown did in 1976. If a Jimmy Carter can win, why not a Jerry Brown?

Prospect preview

Roughly a year before the first votes are counted in New Hampshire, here is how the Brown campaign looks:

• ***Opportunity.*** Carter is stronger now than he was a year ago, but inflation is still rampant and he has an image as something less than an able and decisive executive. He may have picked up some plus points with his bold China move and his efforts to bring about peace in the Mideast. Carter reduced the federal budget deficit, but $29 billion worth of red ink still looks like a good target for a Jerry Brown.

If Ted Kennedy should run from the start, Brown's campaign would be in deep trouble. The polls show that Kennedy is much more popular than Carter or Brown, and the senator would be the prime beneficiary of anti-Carter sentiment. But if Kennedy decides not to run or if he delays, Brown would be able to knock heads directly with the President. The issue would be spending and taxing. Don't bet against Brown in any early primary taking place in a conservative state.

• ***Money.*** Carter and Kennedy should get all they need. Brown will have a more difficult time, especially because big-spending Democrats would fear to buck a sitting president, and because most of those open-wallet contributors who share Brown's views are Republicans.

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• ***Campaign organization.*** Carter will have the party machinery, such as it is, and the tools of the presidency at his disposal. Kennedy would be able to muster a stable of talented political operatives almost overnight. Brown has only himself and his political aide Tom Quinn as heavyweights and he might find it difficult to recruit top-flight workers in other states.

• ***Media.*** The media have been especially kind to Kennedy in recent years. Carter gets the reverence usually accorded to the president, but he has not shown any special skill in manipulating the media. Brown knows how to get the most attention out of his decisions, and he has made it almost impossible for the television networks and large newspapers to ignore him. In fact, he would be in much poorer political condition today had the media given sparse coverage to his inaugural address. Above all, Brown knows how to make himself interesting.

• ***Name identification.*** Anyone who hasn't heard of Carter, Kennedy or Brown won't vote.

• ***Party support.*** Brown will be running an independent campaign. Party regulars will stick with Carter. Many liberals will go to Kennedy. Brown will have to sell himself directly to the masses, rounding up campaign funds and workers from outside the Democratic establishment (or from those who want something from him as governor).

• ***Personality.*** Charisma can win an election. Carter must have a great deal of it; otherwise he could not have taken himself from the peanut shed in Plains into the White House. There is probably no politician in America today who can command an audience like Ted Kennedy. Polls show that many people who say they like him are much more conservative in their views than the senator. Brown, in his own way, turns people on. He proved that with his string of successes in the 1976 presidential campaign and with his series of victories in California.

• ***Issues.*** Carter must live with his record — hardly a tablet of accomplishment that will guarantee his renomination. He will be generally viewed as a middle-of-the-roader, one who has cut back on government spending with a scalpel instead of a cleaver. Kennedy will be the liberal in the field. He is probably the only liberal who is popular across the country today. And this is in the face of his efforts to spend money in the health, education and welfare fields.

Brown is being viewed as the conservative because of his embrace of Proposition 13 and his call for a balanced federal budget. Yet, Brown has some appeal to liberals on non-fiscal issues, such as his opposition to nuclear power and his appointment of women and minorities to state positions. He has many fences that need mending at home, but he need not deal with these while campaigning with broad strokes along the eastern seaboard. He could become a one-issue candidate: Cut the cost of government and solve inflation. In this era, Brown might not need much more.

Learning from Jarvis-Gann

Brown learned a great deal from his confrontations with the Jarvis-Gann initiative. He learned how potent the issue can be. After all, his conversion to "Jerry Jarvis" secured his re-election by a record 1.3 million votes. He learned that it isn't enough to have labor, minorities, corporations and other elements of the establishment on your side if you are running into the teeth of an angry electorate.

Brown is an expert at reacting to the anger and frustration of the swing voter, the blue-collar and middle-class Democrat and independent who is most concerned with pocketbook issues and who blames government for adverse economic conditions. It is the politics of reaching down to the least common denominator. On the other hand, Kennedy appeals to the hopes and aspirations of the voter. He offers the possibility of the return to the Camelot of brother Jack.

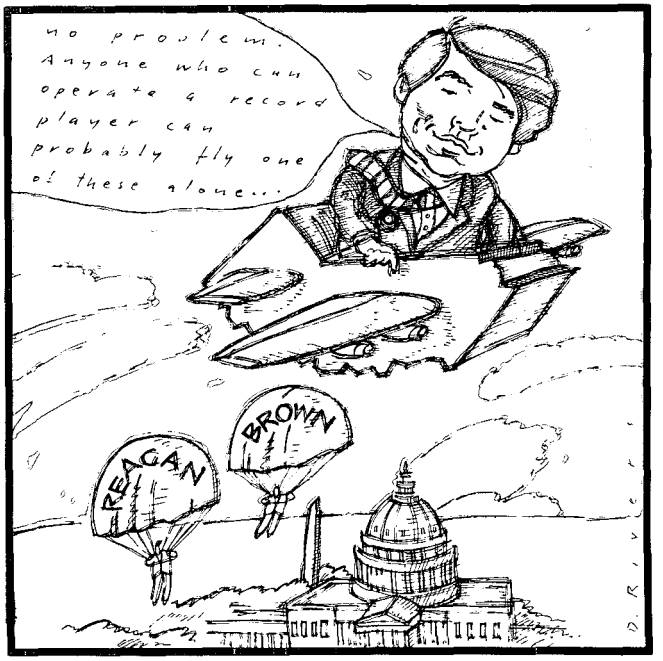

ILLUSTRATION BY DONNA RIVERS

While Brown promises to tear down the bureaucracy, Kennedy talks about building a better tomorrow through the use of government institutions.

If Brown is to win, he must develop an early head of steam, starting with the New Hampshire primary, to prove that his Republican fiscal policies can be sold to Democratic customers. The first order of business was to clear away the deficit from last year's gubernatorial election. Brown assigned his former legislative secretary, Tony Dougherty, the task of rounding up the cash. How will a contributor know when one fund-raising effort stops and the other starts? The selection of Dougherty was intriguing because he is especially skilled at dealing with those issues that are likely to be on the legislative griddle this year. Some folks might get the impression that refusal to contribute would somehow affect whether a bill will be supported or opposed, signed or vetoed.

There have been indications that Brown might announce his candidacy this spring and start working in the East immediately thereafter. That can only be effective if fund-raising progress is made. The Governor has shut off some traditional Democratic sources, but this is nothing new for him. He made plenty of enemies before running for re-election but still came up with more than enough money to defeat Evelle Younger.

One of Brown's problems is disaffection from some of those who usually make up the Democratic coalition — labor leaders, minority spokespersons, ideological liberals. Blacks are upset with him. Public employees and welfare organizations are furious with him. Because of his appointments, he is in better shape with Chicanos and women. Brown must retain his image as a supporter of affirmative action for women because almost half the delegates to the 1980 convention should be female.

If Brown is to defeat Carter, he must go straight to the masses with his hard line on government spending, including the constitutional convention proposal. Will it sell? It looks like a winner. Only hard-line liberals seem to oppose him. The issue is alive in the state Legislature in the form of a resolution by Senator Jerry Smith of Saratoga. The Senate voted 24-14 in favor of the measure to force a balanced federal budget, with Republicans almost unanimously in favor and Democrats divided almost evenly. Assembly Speaker Leo McCarthy was attempting to kill the resolution in the Assembly, and he was having a difficult time keeping Democrats in line.

Senator Kennedy has attacked the constitutional conven-

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tion plan, claiming it could lead to an emasculation of the Bill of Rights. This is because the entire Constitution — not just that section dealing with the budget — would be open to revision. (Even Howard Jarvis is opposed to a convention.) Carter has also criticized Brown, claiming an immediate balanced budget would be irresponsible. There are also those who contend that the federal budget is indeed balanced if the California state budget method of accounting were employed.

The media joined the chorus. The *Washington Post* said Brown has "done himself in . . . by playing fast and loose with the people's hopes and anxieties." The *Wall Street Journal* said Brown has a talent for "getting in front of the next new wave."

The Governor recognizes that he is not admired by the eastern press and by many in the political establishment. Like Ronald Reagan, he sells his wares directly to the people. Nowadays, every time his fiscal conservatism comes under attack for being irresponsible, he has a simple answer: His opponents are employing "scare tactics," just as the opponents of Proposition 13 (including himself) had done; everyone now knows that Proposition 13 was not a disaster, primarily because of the masterful way in which it has been implemented by none other than Jerry Brown.

Better treatment

Here in California, Brown gets better treatment. (Incidentally, the polls show he would trail Kennedy and even Carter if the California primary were held today.) Here, for example, is how the *Los Angeles Herald-Examiner* reacted to the Brown and Carter budgets for the coming fiscal year:

Q. Isn't Brown's "born-again" budget politically motivated?

A. Yes.

Q. Isn't that bad?

A. It'd be worse if he absolutely ignored the mood of the taxpayer. Brown is more attuned to that mood. Carter is more insulated from it . . .

Q. What is the philosophical basis of Brown's new budget?

A. A sort of center-Republican, center-Democratic hybrid. Brown is trying to speak to that vast, unknown silent majority that he suspects spoke up in California when it passed Proposition 13 and thereby woke up the nation.

Q. What is the philosophical basis of Carter's new budget?

A. There isn't any. Carter is a technician. His budget was devised by technicians. It's a technical modification . . .

Q. Where does this leave California?

A. It leaves us in an unexpected position; that, as a direct consequence of the Governor's ambition to get out of California, he may wind up doing something of enormous benefit to California.

If Brown can carry that message to enough people in enough states, there could well be two Californians running for the presidency next year, creating Mike Curb's dilemma. In fact, Brown and Reagan might as well run for president as a team, hawking the magic budget-balancing elixir from the Golden West. As Reagan observed after hearing Brown's inaugural address: "It sounded like my speech."

Special parade — Newsmakers

A total of 21 candidates filed for two special elections to fill vacancies caused by the death of Congressman Leo J. Ryan of San Mateo County and the election of state Senator George Deukmejian of Long Beach as attorney general. Seeking Ryan's seat on March 6th: Democrats — **Joe Holsinger,** Ryan's administrative assistant; **Jacqueline Speier,** Ryan's legal aide; **George Corey,** attorney; **Toby Plough,** businessman; **Curtis Landers,** school board member. Republicans — **Bill Royer,** county supervisor; **David Welch,** economist; **Les Kelting,** Jarvis-Gann organizer; **Bruce Makar,** businessman; **Roger Canfield,** police consultant. The other candidates are **Nicholas Kudrovzeff,** American Independent, and **Wilson Branch,** Peace and Freedom. The nine contenders for Deukmejian's spot on March 20th: Democrats — **Jim Ferruzzo,** deputy district attorney; **Wallace Edgerton,** city councilman; **Renee Simon,** former councilwoman; **Dan L. Branstine,** Lakewood councilman; **Sandy E. Gibbs,** corporation president; Republicans — **Eunice N. Sato,** councilwoman; **Wes Carroll Jr.,** former councilman; **Ollie Speraw,** real estate executive; **Marion (Buzz) McCallen,** Signal Hill councilman. A third special election will be called by the governor in the Fresno-Modesto area if and when state Senator **George N. Zenovich** is confirmed as an appellate court justice. The leading candidates are expected to be Democratic Assemblyman **John Thurman** and Republican **Ken Maddy,** a former assemblyman.

Republican Congressman **John Rousselot,**51,announced that he will run for the United States Senate in 1980 . . . **Ed Clark,** Libertarian Party candidate for governor last year, indicated he will run for president in 1980 . . . Millionaire property owner **Richard J. O'Neill** was elected state Democratic chairman in a contest with **Alice Travis** of Hollywood Hills. The Republicans chose attorney **Truman Campbell** of Fresno without a fight, and Dr. **Tirso del Junco,** a conservative native of Cuba, defeated **Kathleen Crow** of San Marino, 582-422, for the vice-chairmanship .

Governor Brown withdrew the nomination of Sacramento attorney **Milton McGhee** to the state Court of Appeal after it became known that McGhee had written bad checks to cover court fees. McGhee formally requested that the nomination be withdrawn . . . **Dr. Brad Lundborg** of Santa Rosa resigned as chairman of the state Coastal Commission because of growing business pressure . . . State Finance Director **Richard T. Silberman** resigned from the commission charged with screening candidates for federal judgeships . . . Governor Brown restored to Lieutenant Governor **Mike Curb** the authority removed from his office by lame-duck Lieutenant Governor **Mervyn M. Dymally** . . . The state Supreme Court suspended former state Senator **James E. Whetmore** from the practice of law for three months for once having used his office to influence a lobbyist to pay one of his personal bills .

Appointments by Governor Brown: To the Public Utilities Commission, **John E. Bryson,** chairman of the state Water Resources Control Board; **Leonard Grimes,** secretary of state and consumer services, and **Vernon L. Sturgeon** (reappointment). To the Personnel Board, **Marilyn. M. Hallisey,** a Walnut Creek teacher. To the University of California Regents, former Congresswoman **Yvonne B. Burke.**

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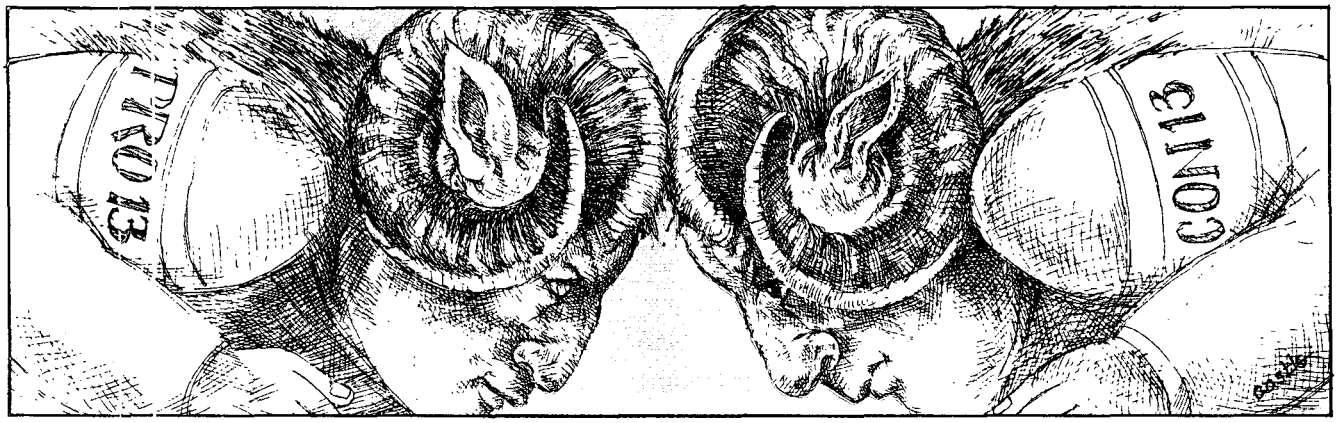
What went wrong with the POST COMMISSION?

By MAUREEN S. FITZGERALD



Governor Jerry Brown's Commission on Government Reform, charged with developing a long-term blueprint for life after Proposition 13, failed almost completely to meet its mandate. With few exceptions, the 117-page report reads like a guide for the Governor and the Legislature on how to avoid the fiscal realities of the Jarvis-Gann initiative.

Submitted on February 5th, 22 days late, the report contains three major recommendations:

- Permanent state takeover of some $4 billion in local-government costs for schools, health, welfare and the courts.
- Increased state taxes, if necessary, to meet local-government deficits.
- Sharing of state sales tax revenues on a permanent basis with local agencies.

Shortly after the findings were announced by Commission Chairman A. Alan Post, both Assembly Speaker Leo T. McCarthy and State Finance Director Richard T. Silberman disassociated themselves with the proposal that state taxes be increased to maintain local services.

What went wrong? It may well be that the commission was destined for failure from the start. Governor Jerry Brown balanced the panel so evenly with supporters and opponents of Proposition 13 that it would be unable to reach consensus or even tackle the hard questions concerning the size, cost and scope of government. The commission's 14 members represented a variety of groups, all attempting to protect their economic interests. If Brown had wanted the commission to put government on the chopping block, he should have stacked it with proponents of Proposition 13.

The original charge

The commission was formed following the passage of Proposition 13 in an executive order announced by Brown in a statewide television address. The order charged the commission with recommending permanent reforms in the tax, revenue and spending systems of state and local government and any necessary reforms in the structure of state and local entities. The recommendations were to be submitted to the Governor and the Legislature by January 15th. Brown named Post, recently retired legislative analyst and fiscal watchdog for almost 30 years, to head the commission. (See box for full commission membership.)

The commission was not given any funds for staff or even stationery costs. Governor Brown's executive order said the commission could use facilities and personnel from existing state government resources. Its members received expenses but no compensation, and the commission's staffing was limited. The City of Salinas loaned its community development director to assist on a nearly full-time basis. Ed Beach, then chief deputy director of Finance, served part-time in the beginning months as executive secretary to the commission. The state Department of Finance provided clerical support.

By the end of July, the commission had developed an ambitious 44-page outline covering four major areas for study — tax systems of state and local government; expenditures of state and local government; organization of state and local government; and the effects of and opportunities afforded by Proposition 13. The commission divided itself into four committees, with each member serving on two panels. Within the four areas, 57 separate study projects were to be examined by volunteer task forces. The commission decided early not to "reinvent the wheel" but rather to draw upon existing reports and available expertise and knowledge. Task-force participants included representatives from cities, counties, special districts, school boards, taxpayer associations, public-employee unions, state departments, low-income advocate groups, legal aid societies and private businesses.

After each task force finished its work, the committees were supposed to review the work and agree or disagree with the findings. It was intended that the full commission would eventually have four completed committee reports

Maureen S. Fitzgerald is the project director for Tax Revolt Digest, *a Proposition 13 newsletter published by the* California Journal.

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from which the full commission would then deliberate. But from the beginning there were problems. Several of the task force reports contained good background discussions but few or no clear-cut findings and recommendations. Committees had trouble meeting. There were no final committee reports.

One example: Former state finance director Caspar Weinberger, head of the pivotal committee charged with reviewing expenditures and finding economies, presented his committee's report verbally at a December 18th meeting. He also arranged for Professor John Coons of Berkeley to make a presentation on the educational voucher system. Labor leader John Henning complained that the committee had already voted not to recommend that the schools be financed under the voucher system. Weinberger responded that he merely wanted the commission to recommend that the merits of the concept be studied.

In addition to inadequate task force reports, there were problems in coordinating committee work. The economies committee said it couldn't work without knowing the revenue situation. The revenue committee said it couldn't fruitfully proceed without knowing the economies that could be made. It was the classic chicken-or-egg situation.

The commission never came to grips with a number of

Post Commission's Major Recommendations

The following are the major recommendations of the Post Commission on Government Reform:

Schools

- Provide mixed funding for elementary and secondary schools and community colleges, with the state providing most but not all funding.
- Allocate state funds to achieve equalization of per-pupil expenditures consistent with *The Serrano v. Priest* decision. (State tax resources should be used to achieve *Serrano* goals as quickly as possible, perhaps within two years, the commission said.)
- Remove legislative restrictions which reduce the flexibility of local school boards to use personnel and facilities in the most efficient and effective manner.
- Transfer to the state full financial responsibility for welfare and social services, including general assistance but excluding foster care.
- Urge the federal government to establish, in lieu of existing welfare programs, a single cash-grant program based on individual need, with differential grants based on cost-of-living differences.

Health

- Have the state assume the major share of county costs in health services. (What portion would be determined by the amount of revenue gap remaining after other local fiscal obligations are assumed by the state.)
- Set up a continuous program of cost-oversight for hospital costs in Medi-Cal. (Administrative expenses in Medi-Cal could be reduced by eliminating prior authorization and sticker requirements in county health facilities, the commission said.)
- Have the state contract with counties for some form of prepaid health plan for part of the Medi-Cal population; offer Medi-Cal beneficiaries a limited choice of qualified public and private providers in order to reduce health care costs.

Courts

- Transfer to the state full financial responsibility for superior, municipal and justice courts but retain administration at local level.

Corrections

- Undertake a major review of purpose and structure of corrections before changing any financing or functional patterns.
- Review probation and parole functions to determine if any savings could be achieved by consolidating them.

Retirement System

- Abolish all public-employee retirement systems and set up a single system with similar retirement benefits.

Employee Benefits

- Set up a new commission to report on actuarial costs and to recommend changes in proposed benefits for state employees.

Mandated Programs

- Require the Legislature to fund all mandated costs of legislative and administrative decisions which result in new or increased costs at the local level.

Local Government Economies

- Encourage local governments to consider private-sector and intergovernmental contracting, consolidation of services, joint purchasing and data processing, standardization of police and fire equipment.

Legislative and Constitutional Offices

- Provide a longer interim period biennially for studying and developing committee bills, instead of depending so heavily on individual members' bills.
- Limit the number of bills introduced by individual members.

Split Tax Roll

- Reject any plan for a split property tax roll. (Such splits ultimately destroy the integrity of the property tax, the commission said. Instead, a method should be found for decreasing tax rates uniformly when assessed values rise.)

Proposition 13 Modification

- In the future, consider amendments to Proposition 13 which would eliminate the inequities that will result from two of 13's features: the reassessment upon property transfer and the maximum 2 percent annual adjustment for inflation.

Property Tax Allocation

- Adopt some formula for property tax allocation which recognizes changing conditions and overcomes the inequities in the initial Proposition 13 bailout legislation.

Special Funds

- Reduce the number of special funds for state revenues.

Federal Funds

- Require federal funds to be appropriated in the budget act, rather than through the continuing appropriation process.
- Implement an improved system for monitoring the receipt and expenditure of federal funds at state and local levels.

Local Taxes, Fees and Charges

- Consider adopting additional user fees and service charges but limiting use of such fees and charges to the purposes for which the fees are levied.

(Such charges should not deprive disadvantaged citizens of any needed services, the commission said. Funds from other sources should be used as necessary to see that this does not occur.)

Sharing State Revenues with Local Government

- Implement permanent reforms rather than repeated one-year bailout bills. Reforms should allow local government maximum authority to generate local revenues, and they should provide an assured level of state-collected revenue, with minimum constraints, to close the gap between local revenues and local needs.
- Distribute guaranteed portion of the state's 4¾ cents sales tax revenue among cities and counties to fill the gap between local needs and local revenues.

Limitation Measures

- Establish in state law a limit on combined state and local spending or revenue. (The commission favored a limit related to a fixed percentage of personal income of all citizens.)

Organization of State and Local Government

- Establish local commissions to look into all matters which could improve government efficiency and effectiveness.
- Organize task forces to analyze what level of government should perform what activities.
- Appoint another state-level commission to review operations at all levels of government and to develop proposals for the reorganization of state, regional and local governments.

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basic questions: What was the Proposition 13 message? Is Proposition 13 good or bad? Was the Proposition 13 vote primarily a call for property tax reform or a call for massive program reductions and economies? If it was a call for property tax reform, was it appropriate to interpret Proposition 13 as a call for a tax shift? The commission never did decide if its mandate was to find replacement revenues for Proposition 13 losses or to identify major program cuts and other means of delivering the same programs at less cost.

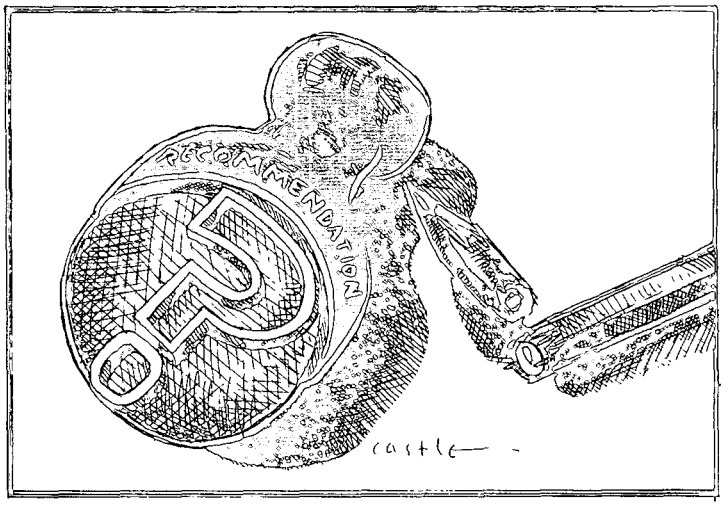
How then did the commission spend its time? As Post noted after the report was completed, the commission spent much more time on philosophical discussions than on the nuts and bolts of government. It spent a great deal of time on questions related to elementary and secondary schools and almost no time discussing special districts and cities. A couple of examples:

- The commission adopted a Weinberger recommendation that a single national welfare grant program be instituted with work requirements for those physically able to leave the welfare rolls. Henning took issue with the work requirement. He asked whether there ever was a full-employment economy. Home-builder Nathan Shapell, chairman of the Little Hoover Commission, countered by saying that hospitals, nursing homes and the construction industry can't fill all the job openings they have.
- The final report notes that because tuition charges for California higher education institutions are so low, the students and the institutions are unable to take full advantage of federal educational loan programs which favor high-tuition colleges. The commission recommended that the Postsecondary Advisory Education Commission and the State Scholarship Commission study the relationship between current available federal funds and the state's current fee charges, with a view toward increasing the state's share of federal educational loan funds. The initiator of the recommendation was William Matson Roth, a former University of California regent. Weinberger: "I have a problem raising tuition charges just to get federal dollars. It strikes me as circular reasoning." Roth: "I don't understand. If we can get federal funds, we should do so." Weinberger: "We're citizens of the United States and of California. I have a lingering concern for federal dollars." Roth: "I don't have your sensitivity for the federal budget."

Some glaring omissions

There are some glaring omissions in the report. The commission recommends that the state take over the major costs of schools, welfare, courts and county health expenditures on a permanent basis. But nowhere in the report are any dollar figures attached to these recommendations, although the total is $4.1 billion. The figures mentioned at commission meetings: courts, $375 million; welfare and social services, including general assistance, $1.2 billion; most county expenditures in health services, $325 million; and the major share of elementary, secondary and community college costs, $2.2 billion. The report also fails to attach a dollar figure to recommended reductions and economies — such as they are. The only reference to a savings figure is contained in Post's supplementary comment: ". . . At the outside, by my own estimate, our recommended economies and specific cost reductions might reach upwards of $1 billion dollars." But the report doesn't mention that if the state assumed more than $4 billion in new obligations, it would increase expenditures about 25 percent above pre-Proposition 13 budget levels (from $15 to $19 billion).

The commission also left major issues untouched. It received strong recommendations on the fiscal aspects of schools in a post-Proposition-13 era. Under the $4 billion bail-out legislation, poor school districts received a fraction of the aid provided wealthy school districts. The result, the report



notes, was the perpetuation of inequities, so that dollars-per-student ranges from about $1,500 to $3,000 per child. After much debate, the commission recommended that the future allocation of state funds be used to bring about equalization of per-pupil expenditures consistent with the *Serrano v. Priest* decision. The report also says that the state should not fund the high-cost programs of high-spending districts. But the commission avoided the issue of pupil performance. No effort was made to answer this question: Why must tax resources be spent in higher education institutions on teaching students what they should have mastered in high school?

In the welfare area, California frequently provides more liberal program benefits than are required by the federal government or than are provided by other states. Another unanswered question: Should California continue to supplement federal programs to the degree it currently does? (For example, the federal government pays 50 percent of the Medi-Cal costs for health care to eligible welfare recipients. California expanded its Medi-Cal program in 1971 to include a category called medically indigent for which there are no federal funds available. In the current year, the estimated cost to the state is $519 million for an average monthly caseload of 287,000 persons. California also has the highest grant level for a single aged welfare recipient in the country and the second highest grant for a couple. According to the state Department of Social Services, California spends more money supplementing the checks of its 700,000 aged, blind and disabled recipients than all of the remaining 49 states spend on their 3.6 million recipients.)

The greatest failing

Perhaps the greatest failing of the report is its lack of specifics about economies in state and local government. Instead, its emphasis is on what to do to fill the gap between local revenues and local needs. The commission noted that past reorganization and reform efforts have been made when general public revenues were increasing and government responsibilities expanding. It is simplistic to assume that consolidating and eliminating duplication of services is always the best cost-cutting device, it said. The key conclusion is that the reorganization of state and local government should be from the "bottom up" and not from the "top down." The report recommends that review and evaluation commissions be established in each county to look into improving efficiency and effectiveness of all local governments. But there are no penalties if a local commission identifies few or no economies.

There are two reasons why there are so few economies recommended in the report:

- Post and commission liberals such as Roth, Henning,

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and Appellate Justice Cruz Reynoso essentially adopted the posture that local government is not capable of absorbing $7 billion in property tax reductions without severely disrupting services and programs. Thus, there was no strong drive on their part to recommend economies.

• Supporters of Proposition 13 on the commission offered few specific proposals on ways to trim the size, cost and activities of state and local government. Their energies and comments during meetings were largely devoted to disagreeing with the proposals of Proposition 13 opponents. Shapell did push the commission to adopt Little Hoover recommendations dealing with Medi-Cal, school facilities and excess state property, however.

Weinberger's dissent

Much media attention was given to Weinberger's dissenting views. His main points: The report neither reflects nor responds to the message the people delivered when they enacted Proposition 13; the final report expresses the viewpoint that the people should not have cut their taxes by $7 billion. He also says: "We believe that the voters wanted to reduce government spending and make it more difficult to increase it in the future; that they were well aware that some of the things government is now doing for or to them would be stopped; and that we should not try to thwart this desire by thinking up plans to repeal, reverse or seriously weaken the thrust of Proposition 13."

Weinberger also urged that a limit on state revenue or spending be placed in the constitution; that the state be constitutionally required to pay for mandated local programs; that a state department of revenue be created; and that special funds be abolished. He mentioned no other specific programs that should be eliminated or reduced.

Was the commission given a realistic mandate? Was it reasonable to expect 14 busy Californians with full-time obligations and varying backgrounds and biases to come up with a definitive post-13 blueprint? Wouldn't Brown have been better off to have asked a Post or a Weinberger to come up with a plan?

A look at the original 44-page outline makes it obvious that the commission tried to do too much and spread itself too thin. The task-force operation fell apart. The commission suffered from information overload. The commission members were, in effect, charged with becoming experts on a variety of complex subjects just by reading reports.

And did it take a commission to identify duplication, overlap and waste in government? The Little Hoover Commission is at work on that task on a full-time basis. And those in the state government, including the Governor and the Legislature, know where cuts could be made. However, knowing where cuts can be made and being willing to take the political heat for making them are quite different matters. And at the moment, there is a sufficient surplus to avoid making unpopular reductions.

From the standpoint of cost, the commission was a bargain. It represents volunteered time and few out-of-pocket dollars to the state. But from the standpoint of meeting its mandate, it missed the mark completely. The commission's bottom-line recommendations are geared to finding replacement revenues for the dollars lost as result of Proposition 13.

Members of the Post panel

In appointing members of the Commission on Government Reform, Governor Brown was seeking a balance of liberals and conservatives, supporters and opponents of Proposition 13. The commissioners *(from left to right):*

A. Alan Post, former state legislative analyst.

Mayor Tom Bradley of Los Angeles.

Publisher **Helen Copley** of the *San Diego Union and Tribune.*

Labor leader **John Henning** of the California Labor Federation, AFL-CIO.

Fred Heringer, president of the California Farm Bureau Federation.

Conservative UCLA economist **Neil Jacoby.**

Appellate Justice **Cruz Reynoso,** former director of California Rural Legal Assistance.

Wilson Riles, state superintendent of public instruction.

William Matson Roth, businessman and a 1974 Brown gubernatorial opponent.

Nathan Shapell, businessman and chairman of the Commission on Government Organization and Economy, known as the Little Hoover Commission.

Rocco Siciliano, business executive of Ticor, the parent corporation of Title Insurance and Trust Company and other financial firms.

Caspar Weinberger, former secretary of the U.S. Department of Health, Education and Welfare and former director of the California Department of Finance.

Darlene Daniel, member of the board of directors, California League of Women Voters.

Clayton Record, president of the County Supervisors' Association of California.

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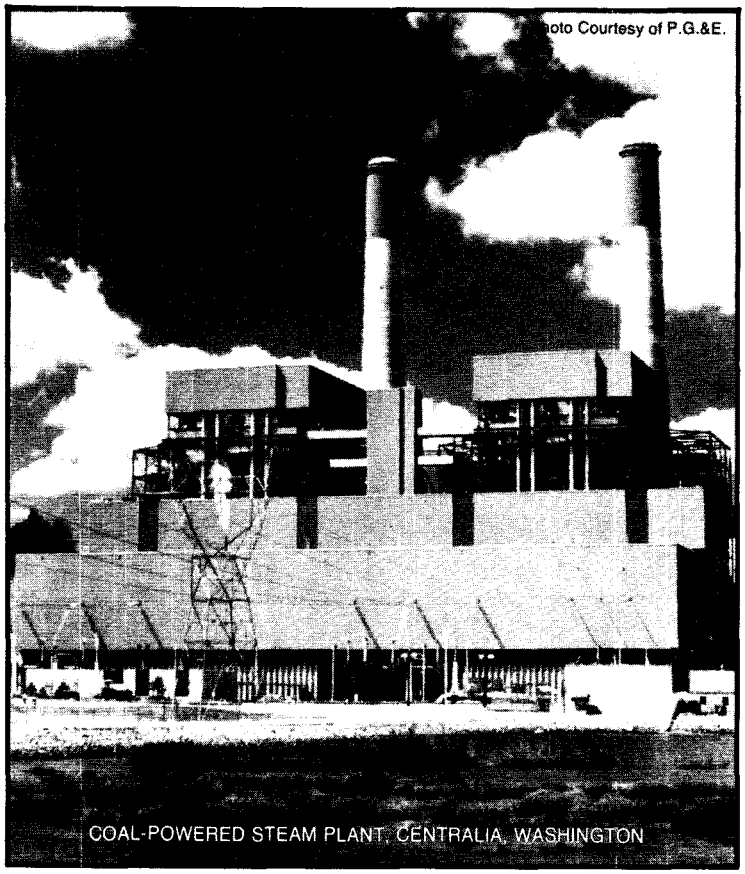
The new energy conflict over the ages-old fuel:

COAL

By ***Nancy Barrand***



COAL-POWERED STEAM PLANT, CENTRALIA, WASHINGTON

California is being pushed into a dark energy corner:

- The state now relies almost exclusively on water, oil and gas for its power. The federal government has prohibited the construction of plants that burn oil or gas. Few hydroelectric resources are left to be exploited.
- The expansion of nuclear power has been curtailed over the issue of waste disposal. Other alternative technologies are not deemed sufficient to meet the estimated future need.
- Conservation measures face economic and political barriers that appear insurmountable, at least for a few years.
- Washington has given California a two-word solution to the problem: Use coal.

Thus far, California has managed to export its coal problems. Six percent of the state's energy needs are now being met through the burning of coal — in Nevada and Arizona. Coal has never been burned in California to generate electricity but the state Energy Commission estimates that it will provide 12 percent of the total supply by 1990, much of this from new plants built inside California. Under the federal energy plan, all present oil and gas facilities are supposed to convert to coal within the next decade or so.

How is California reacting to this pressure from Washington that the state launch itself into a supposedly bright new energy future with one of the oldest, blackest and most plentiful fuels"

The Pacific Gas and Electric Company, the state's largest supplier of power, is the would-be mother of the first coal baby, a 1,600-megawatt facility called Fossil I & II. It would be built at one of four sites in Northern California, three in the Sacramento Valley (Butte, Willows and South Yuba) and one in the northeastern section of the San Francisco Bay Area (Montezuma). The plant would be large enough to meet the lighting needs of San Francisco for 35 years.

Technically, Fossil would not be the first coal plant in the state. Kerr-McGee runs two small coal-fired plants in the Trona area but uses all the power for its own mining operations and does not sell power.

Under pressure

Because of previous support for coal as an alternative to nuclear power, the state Energy Commission and Air Resources Board are under pressure to approve Fossil. PG&E is predicting that it will not be able to meet energy demands if the project is not approved and other electricity sources are not available. This has placed the Legislature under pressure to accept coal. The alternative would be a return to nuclear power, and that means a new fight over the state's stringent nuclear-waste law.

But pressure to build the plant is counterbalanced by opposition to coal use. Environmental and other citizen-action groups are questioning the need and the level of risk to public health and welfare. Battlelines are forming on the air quality issue and also on the related question of state versus local jurisdiction in siting decisions.

Since December 1977, PG&E has been plowing through the 18-month Notice of Intent (NOI) stage of the California Energy Commission's power-plant-siting process. The purpose of the NOI procedure is to determine the best place to locate the $2 billion facilty — or, if coal presents as much of a problem as some studies indicate, the "least worst" place to put the plant.

To educate both the public and the commission, the NOI process includes educational and quasi-judicial hearings at

Nancy Barrand wrote "A new consumer focus for the medical profession" in the December 1977 Journal.

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which experts offer their view on the cleanest, most efficient ways to generate electricity from coal. What has been learned is that seldom do two experts reach the same conclusions. And no one seems to know what pollution-control technology will be available eight to ten years from now, when the plant will begin operating. Even though the experts disagree on the degree, they do concur on one fact: Coal is a dirty fuel and facilities burning coal must be required to control their emissions.

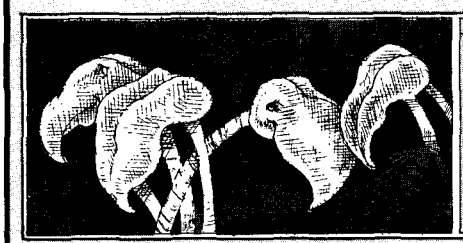
An old solution

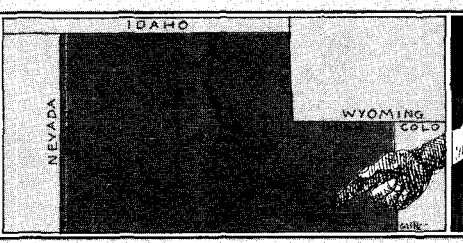
Nothing is new about turning to coal during an energy crisis. It's an old solution to an even older problem. Coal has been burned for centuries to produce energy, usually when other sources aren't available. England was forced to coal in the early 1300s when wood was in short supply; the United States turned to coal for the same reason in 1865. The increased use of electricity in the early 1900s and the limited sources of hydroelectric power spurred an even greater dependence on coal in this country. By 1910, coal supplied over 70 percent of U.S. energy needs.

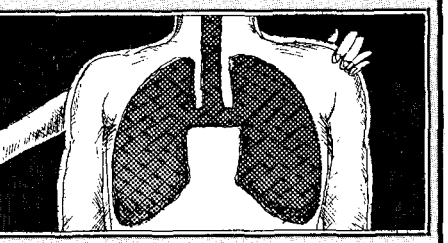
Mass production of the automobile and the need for hotter, cleaner and more efficient fuels allowed oil and gas to replace coal rapidly in the '20s and '30s. Economic incentives pushed oil and gas onto the market at the same time pollution regulations pushed coal out. By 1940, the use of oil and gas far exceeded the use of coal. Today, coal contributes less than 20 percent of the country's total energy supply; oil and gas now account for more than 75 percent. But the pendulum is swinging again, and America is being forced once more to turn to coal.

While Washington may be intrigued by a coal future, California has reason to be less enthusiastic. Some experts doubt that coal can be burned at all in California without seriously jeopardizing air quality. The coal currently coming into California is used exclusively for industrial production; most of it goes to the Kaiser steel plant in Fontana to make coke for steel production. The rest is used for coke by

A coal primer: questions and answers







What is coal? Like oil and gas, coal is a member of the fossil-fuel family. These fuels are composed of organic material rich in carbon and hydrogen, and they burn steadily at high temperatures.

How was coal made? Coal was formed more than 250 million years ago when the earth was a lush greenhouse. Dead plant matter collected in bogs on the forest floor. As the sea rose and fell, the land twisted and folded, burying layers of vegetation. Eventually, there was no oxygen supply to the bottom layers, and decomposition stopped. These layers of vegetation became "entombed layers" of carbon. The pressure from above compacted these deposits. Heat and pressure broke down the plant materials, eventually converting them to coal — the greater the stress, the higher the grade of coal produced.

Where will California get coal? California has no commercial coal supply. Pacific Gas and Electric Company plans to get its coal from the area around Price, Utah, the coal capital of the West. PG&E owns leases in Utah for large deposits of low-sulfur bituminous coal that will cost about 99 cents per Btu, far cheaper than oil or gas now burned in the state but a bit more expensive than California crude oil.

There is no lack of coal in the United States. There are an estimated 433 billion tons in the country, enough to meet the nation's power needs for several hundred years. Coal represents 87 percent of the country's energy reserves.

Does the burning of coal create serious pollution? Coal contains impurities, and these can vary even within the same mine. During combustion, carbon is burned and a mineral ash residue remains. The PG&E coal would leave an ash of 10 percent. Most of this would be collected in the plant, but the finer particles would escape into the atmosphere.

The biggest problem is sulfur, which is released during the burning of coal in the form of oxides. Outside the furnace, these oxides form the pollutant sulfur dioxide. The other major emission is nitrogen dioxide, but a coal-fired plant would also emit carbon dioxide, carbon monoxide, hydrocarbons, radionuclides, and hundreds of trace elements. Some of these chemicals are considered highly toxic, depending upon the concentration.

Will new plants remove most pollutants? A coal plant wouldn't look much different from an oil-fired generating facility in use today. But the new pollution-control technology would make PG&E's Fossil I & II cleaner than any oil plant in use today.

The plant would work this way: Coal would be crushed to burn rapidly. It would be cleaned to remove as much sulfur and ash as possible. The coal would be fed into a boiler with a mixture of air, creating combustion while the coal is suspended. The heat is harnessed to convert water into pressurized steam, which is forced through a turbine to run an electricity-creating generator.

When coal is burned, heavy particles fall below the furnace and are collected. Smaller particles and gasified elements are carried in a flue gas stream toward the stack (600 feet high in the case of the proposed PG&E plant) which will release them to the atmosphere. Before the gas reaches the stack, however, it passes through a series of scrubbing devices designed to remove pollutants.

But even with the most modern controls, Fossil I & II would be a significant source of pollution. Among the chemicals that would pass through the system: hydrocarbons, 101 pounds an hour; carbon monoxide, 356 pounds per hour; particulates, 108 pounds per hour; sulfur dioxide, 1,080 pounds per hour; nitrogen oxides, 4,860 pounds per hour.

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large cement producers in Riverside. If the air quality in Fontana and Riverside (some of the worst in the Los Angeles basin) is any indication, coal is not making a good first impression on the state.

In the East and Midwest, where coal has been burned to produce electricity since the turn of the century, the dirty air and black soot on the buildings probably will not improve that first impression. But facilities there burn a lower quality coal than will be used in Fossil I & II and also often operate with outdated equipment and without any pollution controls.

PG&E promises that Fossil I & II will be the cleanest coal-fired power plant in the nation and perhaps the cleanest in the world. Recognizing the problems associated with burning coal, Charles Thissel, PG&E attorney for the Fossil I & II case, thinks the technological problems are largely solved: "If you'd been in the East or the Midwest or around the Great Lakes and saw a coal-fired plant, it's awful, absolutely disgraceful. That's the only way coal will burn; it's a dirty fuel. But we've brought into play a lot of new technology for handling both the air emissions and the waste products. The uncertainties now are largely marginal differences in various systems -- which system is really preferable. In other words, we're down to choosing between a Ford and a Chevrolet."

But skeptics argue that much of the pollution-control technology PG&E proposes has not been tested on the scale it will be built for Fossil I & II. Some even doubt whether coal-burning can ever be made clean enough to protect the public health and welfare.

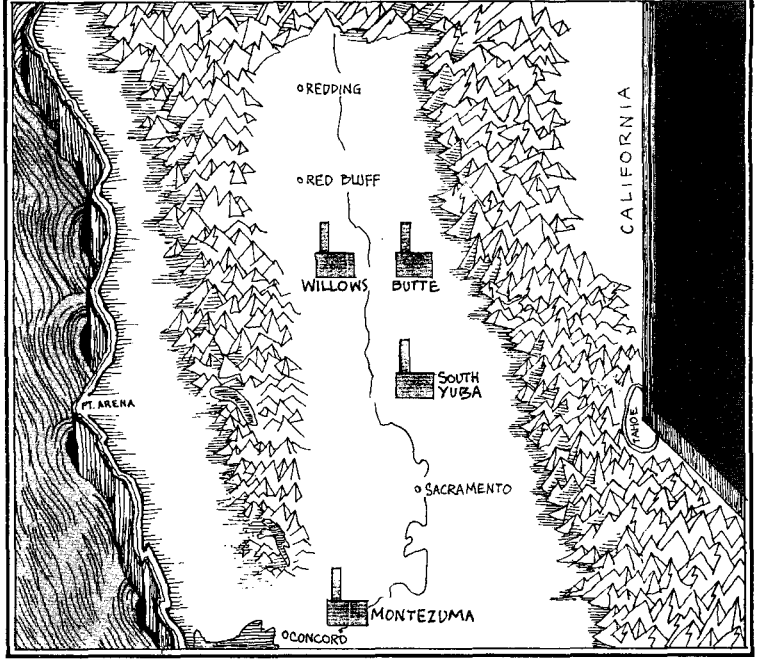
A major commitment

California has no process for handling the problems associated with burning coal. Building the first plant requires a major state commitment to a coal future: finding the supply; opening the mines; transporting the coal into the state; locating a site suitable for storage; constructing the facility; planning water usage; mitigating the impacts on air pollution and land use; processing the wastes; and placing hundreds of miles of transmission lines across Northern California. And each step in the process raises concerns about environmental, economic and social costs. And the NOI hearings are raising more questions than they are answering. For example:

• ***Can California afford more air pollution?*** The major issue is the sensitive one of air quality. Burning coal in California has long been considered inconceivable from the standpoint of pollution. As Frank Bonamassa, chief of the atmospheric studies branch of the Air Resources Board in El Monte, puts it, "All the pollution here is related to fuels, except for the solvents, and fossil fuels are just plain crummy. Oil is crummy, gas is crummy, but coal — coal is one of the worst."

California has some of the worst pollution problems in the country and, consequently, some of the strictest air pollution regulations. Under the authority of the National Clean Air Act, several of the state's air quality standards are stricter than federal standards. Each air pollution contol district in the state sets emission standards to limit the amount of various pollutants any one facility can put into the air.

• ***Whose standards for air quality must be met?*** PG&E has to be wondering which standards and what regulations Fossil I & II will be required to meet. Interpretations of the Clean Air Act amendments of 1977 are still being worked out. Fossil I & II will be the first power plant sited under the New Source Review (NSR) rules required by the Clean Air Act and written by the state ARB. These rules regulate any new or modified stationary source built in an area where a federal air quality standard has been violated. A proposed facility is required to use the best available



control technology and must mitigate any impact from the project by making "trade-offs" with existing sources of pollution. A facility may be constructed, but it must be as clean as possible, and its owner must remove more pollution from the area where the plant will be located than the amount of pollution the facility will put into the air. In other words, PG&E will have to pay to clean up pollution from other sources in order to site Fossil I & II.

But a big question mark is involved: Local air pollution control districts (APCDs) can adopt still more stringent local emission standards and require any source wanting to build in their area to meet these standards. Fossil I & II can meet the federal air quality standards, but the facility may not be able to meet all the state air quality standards or comply with more stringent local regulations. In areas where the standards are already being violated (which includes every air basin in the state), the districts may not be willing to compromise their local prerogative to set tougher standards than those required by state or federal laws.

Lines are being drawn between the ARB, the local APCDs, and the Energy Commission over which standards Fossil I & II will have to meet and whose responsibility it is to set them. Under the Warren-Alquist Act, the Energy Commission was granted authority to override all state and local standards in choosing a site if the commission concludes that a power plant is absolutely necessary and if all precautions have been taken to comply with as many state and local regulations as possible. But another part of the same act says that the commission cannot override any standards dealing with air and water. Thus, the commission may find itself exploring the legally and politically precarious line between what it can and cannot do.

The ARB may also be able to preempt local APCDs by overriding their authority in air pollution regulations. But neither the Energy Commission nor the ARB wants to be put in the position of forcing a power plant down the throat of a local district. The jurisdictions are fuzzy; no one is willing to assume responsibility when the authority may not be legally justified and when the decisions will certainly be challenged.

• ***Who gets the plant?*** One irony of the situation is that, although their local emission standards and regulations may prohibit construction of Fossil I & II, several of the districts actually want the plant because of the high tax revenue the plant would generate. PG&E has indicated that taxes to a county may run as high as $12 million; the state Board of Equalization estimates a more conservative figure of about $4 million. Either way, the taxes will be a sizable help to a county budget, especially after the cutbacks of Proposition 13.

But as Butte County found out, a board of supervisors does

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not always represent the opinions of the people in the county. In a referendum last fall, more than 57 percent of the county's voters opposed siting Fossil I & II in Butte County. Only weeks before, the county's board of supervisors voted unanimously in favor of the facility.

Meanwhile, several citizen-action groups and environmentalists are trying to evaluate the merits of Fossil I & II. The Energy Commission hearings have attracted more than 40 representatives of such groups as the Sierra Club, South Yuba People's Association Against the Coal Plant and the Lung Association of Superior California. Since early 1978, representatives from such groups have attended hearings, presented witnesses, cross-examined PG&E's witnesses and made sure that all issues are discussed before a final site is approved by the commission.

These groups are trying to deal with some of the more intangible issues concerning Fossil I & II, especially the health risks to people living near or downwind from the plant, and the impact of the facility on agriculture.

PG&E maintains that if the plant meets federal air quality standards, the public health and welfare should be adequately protected. But there is increasing evidence that those standards may not be sufficient to protect all the people all of the time or to prevent crop damage.

The air quality in the regions where PG&E proposes to build Fossil I & II does not meet the standards now. Several concerned groups believe that the people in these areas cannot afford to be exposed to any increase in air pollution, especially from coal. The pollutants coal emits when it is burned — sulfur oxides, nitrogen oxides, particulates, trace elements and hydrocarbons — can lead to a wide range of health problems, from mild irritation to acute toxicity and even to cancer. Several studies have revealed increased lung disease and death rates where coal is burned in large quantities. But these studies were done in Europe and in the East and Midwest of the United States, where high-sulfur coal is burned and very little pollution-control equipment is used in the plants; therefore, it may not be fair to apply the findings from these studies to Fossil I & II.

However, further studies must be done, says Mike Tegtmeyer, a representative of the Lung Association of Superior California. "When cigarette smoking reached wide-spread popularity early in the century, we did not know its effects because no attention was paid to the possible risks. Now, cigarette smoking is known to be a major factor in contributing to and causing lung cancer and is blamed increasingly for a number of other health problems . . . It was only in the late '60s that we began to recognize the correllation between air pollution and health, and only very lately the correlation between air pollution and certain lung diseases."

Yet the Lung Association has taken no position on a coal-fired power plant. Tegtmeyer says: "We cannot damn PG&E if we don't know what kind of risks we're talking about."

PG&E proposes four sites for Fossil I & II (see map). Three are in the Sacramento Valley air basin; the fourth is in the adjacent Bay Area air basin, where air pollutants could be transported by winds into the Valley air basin. The Sacramento Valley is one of the richest agricultural regions in the country; total revenues from agriculture amount to billions of dollars annually. Significant crop damage from air pollution could result in severe economic consequences for the state.

At the emission levels projected from Fossil I & II, no immediate impact on crops is expected. But there is considerable uncertainty and debate over what long-term, cumulative damage may occur during the plant's operating life. Many crops are extremely sensitive to air pollution, and the factors determining their susceptibility include a wide range of variables, from the type of plant and its stage of development to meteorological and soil conditions.

Friends of the Earth (FOE), a well-known environmental group and interested party in the Fossil I & II case, argues that prime agricultural land should not be taken out of production for the facility and that all the proposed sites would have a great impact on agriculture. Joe Brescher, an attorney representing FOE and two other groups in the hearings, says, "California has committed the Central Valley to being America's salad bowl and has millions of dollars invested in it because it's the best kind of place for agriculture in the whole world. To put a power plant there, in competition with farming (because that's what it is — competition for clean air) seems crazy if any other sites can be used."

Wastes and trade offs

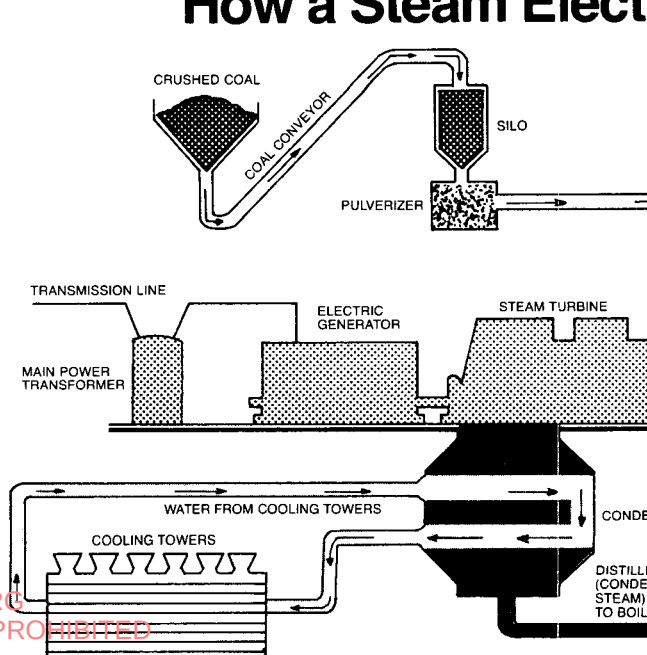
Two other major issues raised in the hearings are the problems of waste disposal and the availability of trade-offs. A large quantity of waste material will be generated by the facility: About 57 million tons or 20,000 acre feet of wastes will need to be disposed of during the 35-year life of Fossil I & II. The wastes will include a great number of toxic substances, likely to be classified as hazardous wastes. This means that they must be placed in Class I disposal sites, areas where the material can be isolated from the environment and monitored throughout its lifetime.

Class I disposal sites are scarce in California; most of them are nearly full. PG&E will use its own land as a disposal area, either on site or off, depending on the final location of the facility. Environmentalists and others argue that committing 800 to 1,000 acres to be a toxic graveyard is at best an unfortunate use for good land. It may be possible for some of the wastes to be recycled and used in other applications, such as road building. FOE's Brescher has requested that PG&E be required, as a condition to the siting of the plant, to recycle the wastes or to use a system that will not produce toxic waste products.

Some of the citizen-action groups representing the valley counties resent the fact that all of the power produced by Fossil I & II will be used in the Bay Area. They argue that if the power is needed there, the consequences of producing it should also be handled in the Bay Area. This may turn out to be the case, because there may not be enough trade-offs available in the Valley Air Basin to mitigate Fossil I & II's emissions.

But the Bay Area's Montezuma site, located at Collinsville, has its own special problems. The site is close to where Dow Chemical proposed to build two years ago and was denied a permit. Fossil I & II will face similar opposition. Although there are available trade-offs in the Bay Area Air Basin, and the Bay Area APCD has more lenient air

How a Steam Elect



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pollution regulations than any of the Valley districts, the site PG&E proposes to build on is in the highly protected region of the Suisun Marsh. The site is the home of the salt marsh harvest mouse, protected under the federal Endangered Species Act. The site is also on land protected by both state and federal wetlands legislation.

The Energy Commission staff is seeking sites which may be more acceptable; but after spending more than $10 million on its NOI to screen all possible sites in Northern California, PG&E is not eager for the commission to propose another site. It would mean more costs and delays to collect all the site-related data necessary.

PG&E's Charles Thissel is encouraged by the preliminary report on Fossil I & II issued by the commission last November: "I feel the preliminary report indicates that all four of our proposed sites appear to be acceptable, preliminarily at least, to the commissioners." The report ranked each of the sites based on every factor involved in the case. But much of the information needed to evaluate the sites has yet to materialize. The air quality model PG&E is using is still being developed and won't be tested until this summer. Opponents do not understand how the sites could be ranked without this air quality data.

'Banking' three sites

The issue of ranking the sites is made more important by the fact that PG&E can "bank" all approved sites in the NOI. This means that if the commissioners find that all four sites are acceptable alternatives, the NOI is approved and PG&E may file an AFC to build Fossil I & II at one of the approved sites and set the other three sites aside for future use. PG&E can later select one of the three sites from the bank, at its discretion, and file an AFC to build on the site without going through the lengthy NOI process again. FOE's Brescher objects to eliminating the NOI process for projects which may not be proposed for five to ten years, when conditions are likely to be different.

Larry Chaset, staff attorney for the Energy Commission, says that if PG&E wants to come in with an AFC for another coal-fired plant at a banked Fossil I & II site, they would have to show need for the facility, need for the additional power, and they would have to demonstrate that the plant would conform to all applicable laws.

But Brescher is concerned that if the NOI is approved for all four sites, PG&E could build four power plants. Instead of approving one 1,600-megawatt plant, the Energy Commission actually may be approving 6,400 megawatts of power. Chaset agrees this is a possibility, but he does not think it probable. PG&E would not be able to show the need for more than one facility and it could not find enough available trade-offs in the air basins, he says. "Something the magnitude of Fossil I & II could not be sited simultaneously at all four sites . . . Within the time frame of this proposal, only one site will be used." PG&E agreed at the hearing that if all four sites were approved in the NOI, three of the sites would be placed in a bank.

There are strong doubts that the Energy Commission would disapprove of all four sites, even if none of the sites is completely acceptable. Since last year, when the commission refused to exempt the Sundesert nuclear plant from the Nuclear Waste Disposal Law, the commission has been under fire, especially from the state Senate, to site a power plant and prove the commission is not anti-growth.

The pressure from the Legislature has evolved into a coal-versus-nuclear debate. Several Senate committee hearings have been held to investigate the possible use of coal, and they have provided a forum for expounding coal's problems and nuclear power's merits. If coal is not permitted to be burned in the state, there will certainly be a lot of lobbying in the Legislature to exempt one of more nuclear plants from the current nuclear safeguard law or to reexamine the issue of nuclear waste disposal, possibly abolishing the nuclear laws altogether. As Commissioner Suzanne Reed says, "If we eliminate coal as an alternative, we must look at all the other alternatives we have, and this includes nuclear power . . ."

Commissioner Gene Varanini does not think the problem of future energy supplies should come down to such a choice: "The holy war between coal, nuclear and solar does not require a fundamental decision this year." Varanini predicts that the commission's new biennial report, a forecast and supply option plan for the state's energy needs, will show that load growth in the state is much lower than expected and that there will be enough oil available to bridge the gap between nonrenewable and renewable energy sources. If coal is not a reasonable option, the state should take a hard look at coal gas, Varanini says. (Coal gas is a clean alternative coal technology which converts coal into a synthetic natural gas, but the technology is several years away).

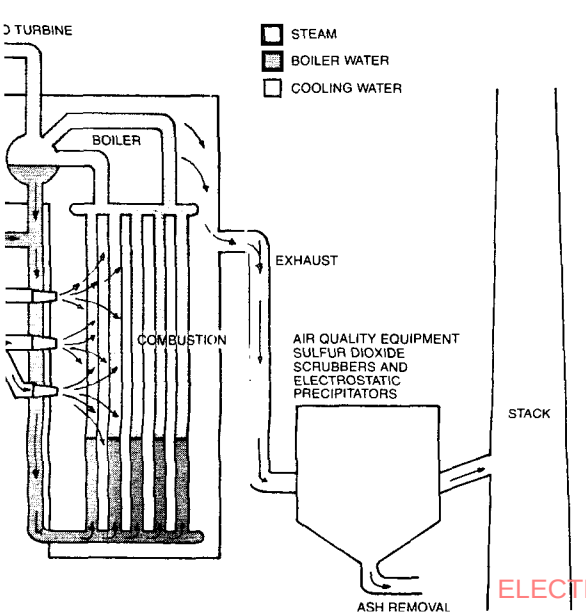
Environmentalists' third door

The environmentalists are in a quandary. Outspoken against nuclear power but not particularly sold on coal, they are reluctant to oppose the one if the consequences will be ensuring the use of the other. Choosing the only safe third door, they question the need for any new power plants and propose meeting future demand with renewable energy sources (solar, wind, wood) and strong conservation measures.

But the third door may also harbor some surprises. The utilities argue that they would like to replace some of their older, oil-fired base-load plants with new facilities that would be cheaper in the long run. To replace these plants, there must be an available supply of energy, be it nuclear, coal, oil or gas. This may also be to the environmentalists' advantage, especially if the new plants are coal-fired, because the dirtier oil plants would be replaced with cleaner facilities designed to meet more stringent pollution regulations.

Coal's best friend may be Governor Brown. In an attempt to overcome an earlier anti-business image and to gain industry's support for his bid for the presidency, Governor Brown may decide to push for approval of the power plant. And the Legislature is keenly aware of PG&E's dire predictions of the consequences if Fossil I & II is delayed or denied. The momentum is building to site at least one or two coal plants in the state. Odds are that at least one of PG&E's proposed sites will be approved this year.

ower Plant Works



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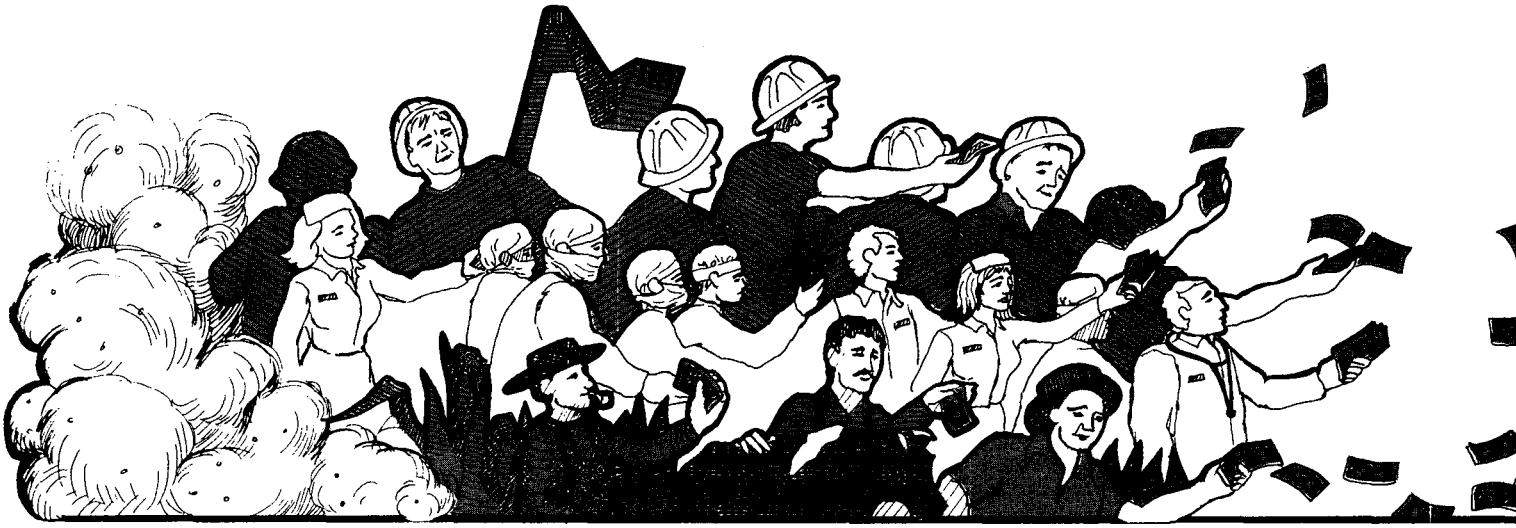

ILLUSTRATION BY NARCA MOORE

'LAST OF THE SMALL-TIME SPENDERS'

Political Action Committees – the new campaign bankrollers

By TONY QUINN

Former Senator Arlen Gregorio was probably the last of the small-time spenders. He prided himself on refusing to take campaign contributions from special interests and set a limit on personal contributions. Unfortunately for Gregorio, he faced an opponent last fall who did accept special-interest contributions and who widely outspent him. Gregorio lost re-election by a handful of votes. Politicians take note of such things, and Gregorio is probably the last of his breed.

Money talks in politics as never before. One of the aims of the post-Watergate reforms was to limit the influence of money in politics, and with this in mind disclosure laws and limits on campaign contributions were enacted. State and federal election reforms were expected to restrict large campaign contributions.

But the effect has been just the opposite. The new campaign laws revolutionized political fund raising, and the result is far more special-interest political money, rather than less. Campaigns themselves underwent their own revolution in the late 1960s and early 1970s. Extensive use of media and sophisticated mailings replaced older, less expensive means of communicating with voters. But the newer techniques have one notable problem: high costs.

Cost of television time has increased as much as 300 percent in some markets just since 1970. Uncle Sam is a major contributor to high costs through rising postage rates. It did not take politicians long to realize that use of the new techniques required more effective fund raising.

The new campaign laws showed them how. As a means of limiting campaign money, reformers pushed through Congress legislation limiting personal contributions to federal campaigns to $1,000 but allowing political groups to contribute up to $5,000.

This meant that instead of the bad old system of a few millionaires giving vast amounts to selected campaigns, interest groups could now pool their money and spread it willy-nilly among a multitude of campaigns. Thus was born the Political Action Committee (PAC) which has now become the dominant force in special-interest campaign contributions, both in California and throughout the nation.

The federal campaign laws reinforced the longtime prohibition against direct contributions by corporations and labor unions. This, along with the $5,000 contribution limit for associations, virtually invited them to pool their money into PACs. Philosophically, the PAC may be the epitome of interest-group democracy; it is an association of like-minded individuals — stockholders, labor union members, corporation executives — who put their money into a common fund and direct it to the politicians of their choosing.

One problem with the PACs is that people often don't know who they really are. How does one know, for instance, that CAL-PAC is really the state medical association, or that California State Legislative Board Committee is really the United Transportation Union, or that Good Government Fund is really the Pacific Gas and Electric Company?

Some PACs represent individual companies; others represent associated professionals and some are multi-member associations and unions. The AFL-CIO's PAC, Committee on Political Education (COPE), is probably the oldest and best known.

No matter the interest group, though, the fact is that nearly every economic group now has a PAC. Once the first special interests came up with PACs, everyone else followed, like penguins diving into the ocean. In 1974, there were 89 corporate PACs giving to federal campaigns; now there are 776. Add to that the 263 labor union PACs, and the 1978 congressional campaigns became the first "thousand PAC election." And this does not count the ideologically oriented PACs. Observers expect there will be 1,000 corporate PACs alone by the 1980 elections.

PACs deal in huge amounts of money. According to the

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Federal Election Commission, special-interest PACs had raised $54 million by last June and were expected to put some $40 million of it into 1978 federal campaigns, almost twice the $22 million they spent in 1976. California corporate and labor PACs contributed more than $9 million to June primary campaigns last year.

Needless to say, reformers are outraged, particularly since their own reforms brought the PACs into being. Common Cause vice president Fred Wertheimer says the country is headed towards a "new political system of PAC democracy, with Congress representing the political action committees of America instead of its citizens."

The reform movements cannot be held entirely to blame for the growth of "PAC democracy." Their ultimate goal was public financing of campaigns, combined with contribution and spending limits. Congress was willing to enact limits on contributions and expenditures, which many feel favor incumbents and hurt challengers, but it has balked at public financing.

Congress is unlikely to further reform these reforms. Since they came into effect, incumbent congressmen have found it easier to get re-elected then ever before. And the greatest amount of PAC contributions go to incumbents. In California, the Legislature, which nearly passed a public financing plan in 1975, has cooled markedly to further election reforms

From the candidate's standpoint, PACs are a passive source of money, in that someone else raises the money and then turns it over to the candidate. But the costs of running for office are escalating so that candidates feel they must develop new and more effective means of bankrolling their campaigns.

Every election seems to break the money record of the past election, and the 1978 California campaign was no exception. More than $6 million was raised in the Republican gubernatorial primary just for the right to take on Governor Jerry Brown. State PACs gave generously to gubernatorial candidates, although they saved most of their money for legislative races.

Maddy's way

Two GOP candidates came up with ways of raising money beyond the usual dependence on PACs, friends and party sources. Assemblyman Ken Maddy became the first serious candidate for governor to identify openly with a particular interest, California agriculture, and to use that interest as his source of funds. Farmers were particularly angry at Governor Brown and were willing to raise early money for a massive Maddy television effort. This was intended to show a dramatic Maddy rise in the polls, which would then generate further funds from traditional Republican sources.

Maddy raised more than a million dollars in small contributions, mostly $100 to $500 amounts from farmers and farm-oriented groups, and much of this went into early television commercials. The Maddy strategy might have worked had it not been for the fact that his campaign was eclipsed by the media attention lavished on Proposition 13, and Maddy's own opposition to the Jarvis initiative. The Maddy technique — tapping a particular interest group for early money with which to raise later money — may still be sound, and it could well find a successful exponent in the future.

The 1978 primary also saw the first effort, likewise unsuccessful, at running a campaign almost entirely by mail. It was the first major use in California of a popular national technique: massive direct-mail fund raising. The candidate — former Los Angeles police chief Ed Davis — finished second in the GOP gubernatorial primary.

Along with encouraging the PACs, the new federal laws have been a boon to direct-mail fund raisers. Since no one individual can contribute more than $1,000 to a federal race, candidates must raise their money in small amounts from a huge base. Public disclosure of campaign contributors provides a list of potential givers.

No one knows this better than the Richard Viguerie Company of Virginia, the nation's premier direct-mail fund raiser. Viguerie is the financial wizard of the "new right," the militant young conservatives who have tapped a gold mine of campaign money through the mails. Viguerie's company has a mailing list of some five million likely donors to conservative candidates and causes. He probably raised some $25 to $35 million for last year's elections, sending out more than two million computerized fund-raising letters a week.

Viguerie picks his candidates carefully; he only had about 30 House races in 1978, and this included several conservative challenges to moderate or liberal Republicans. In California, Viguerie's main client was Ed Davis.

Davis raised and spent $1.8 million, more than any other Republican candidate, and most of it came in through Viguerie's direct-mail operation. A glance at the Davis campaign reports shows that he raised more than half his campaign funds in sums of less than $100. The Viguerie organization attempted to reach every Republican household in California on Davis' behalf.

High overhead

Unfortunately for Davis, this fund-raising success was not translated into votes, perhaps because Davis spent very little of his money on television, the proven way to reach voters in California. The big flaw in the Viguerie method is that, while it raises a big bundle of campaign funds, most of the money goes into overhead. Davis spent more than half the money he raised just to cover mailing costs. Viguerie charges a hefty fee for his services while he is amassing a huge donor list for future efforts. In the end, Davis ran no better in the June primary than he had been polling before the campaign began — an indication that Viguerie's system is more successful in raising money than in gathering votes.

The "new right" fund-raising technique has come under some criticism because of excessive overhead expenses. Howard Jarvis' American Tax Reduction Movement, which raised some $46,000 through the Butcher-Forde consulting firm of Newport Beach, spent 71 percent of these funds on overhead, including $13,000 in fees to Butcher-Forde.

Senator H. L. Richardson, a Viguerie ally in California, runs a company similar to Viguerie's, Computer Caging Company, which raises money through two anti-gun control PACs, Gun Owners of California and Gun Owners of

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America. In the 1978 primary, Gun Owners of California reported raising nearly $400,000, but they gave only $189,000 to candidates, and $100,000 of this went to Ed Davis. The Davis campaign in turn spent some $45,000 with Computer Caging, which means that even less of the gun PACs' money actually went toward getting votes.

Critics note that only a small percentage of the total funds raised by these "new right" companies actually goes for its stated goal: electing candidates. The *Sacramento Bee* reported that only 9 percent of the more than $3 million raised by the two Richardson gun PACs in 1976 actually went to candidates; the rest went to various overhead costs. Were the politicial fund raisers doing this for charities, a much larger percentage would have to go to the charity or the fund raisers would run afoul of the law. Some observers have suggested that the political fund raisers should be regulated like charitable trusts.

Another danger is that these vast amounts are controlled by very few people, who may direct them against the contributors' wishes. Richardson gave Gun Owners money only to Ed Davis, although other GOP primary contestants had similar anti-gun control positions. It is unlikely that all of the thousands of people who gave to the Gun Owners wanted their money spent on Davis alone; many probably favored Evelle Younger, Ken Maddy or Pete Wilson for governor.

Nevertheless, direct-mail fund raising is the wave of the future, even in states like California where there are no limits on how much a person may give to a campaign. Republicans seem to favor this method somewhat more than Democrats, although there are reports that liberal activist Max Palevsky plans to establish his own direct mail firm and become a "Viguerie of the left."

LOOK WHAT YOU'VE BEEN MISSING IN . . .

Tax Revolt Digest

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Lists of true believers

Direct-mail fund raising is successful because, once a list of true believers is amassed, the well is almost bottomless. If you make a campaign contribution in California of $100 or more, your name and address are publicly recorded, and your name will probably find its way into somebody's computer. Suddenly political appeals flood to your door, and the more you give, the more appeals you get. Some people received three and four mailings a week during the campaign period last year.

Almost all the appeals follow the same format, and according to some operatives, "The shriller you are, the more success you have raising funds." Some recent examples:

- "California is on a collision course with social and economic disaster . . . You and I know our state cannot survive ten years of uninterrupted liberal Democratic rule. We simply can't sit back and watch while Big Labor and the Liberal Democrats drive California to the brink of social and economic chaos."
- "George Meany, Democrat Party, liberal lobbyists in frantic all-out joint effort to overwhelm GOP candidates with last-minute campaign offensive. GOP gains in serious jeopardy unless we can raise funds to counter Democrats' final campaign attack. Your contribution urgently needed." (This one was in telegraph format.)
- "You can bet the liberal Democrats are hoping you will throw my letter away. They know unless we move now, in these last critical days, it will be far too late to put a stop to their plans for total domination of California."

And the shrillest message of all:

- "I just read our computer update report, and I was shocked to find your name, for the first time, on our inactive list."

While conservatives seem to favor this hard-sell approach, Democrats and liberals are not far behind. Their mailings tend to compare the arrival of the "new right" with that of the four horsemen of the Apocalypse. Some direct mailings include a poll on national issues as a come-on to whet the giver's appetite. The Senate Republican Caucus last year sent out a list of targeted Democrats with "confidential" stamped all over it. A Republican National Committee fund raiser promised a "shocking new book on Carter's presidency" to all who signed up.

While this glut of new political money is certainly not what the reformers anticipated, it is not altogether bad. No one can deny that as long as campaign costs rise, large expenditures are necessary. Many of those who push for public financing as a solution to high campaign costs fail to recognize that incumbents already have a form of public financing, including free mailings, big staffs and other perquisites of office. As a result, large-scale private spending by challengers is necessary just to make the race competitive.

The reforms accomplished one goal: They ended domination of campaigns by a few big givers. Most PACs are fairly broad-based, representing corporation stockholders or labor union members. And success of direct mail depends upon moderate contributions by a large number of people, most of whom are ideologically motivated.

One thing is certain: Political fund raising, like every other aspect of politics, has become sophisticated and professional. The days of funding a campaign by passing a hat through a meeting hall or by generous checks from a few fat-cats are gone forever. Now everybody who owns stock, belongs to a labor union, or has a mailbox is potentially part of the process.

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Ze Mooz

HUMOR BY H. L. (BILL) RICHARDSON

The conservative views of state Senator H. L. (Bill) Richardson are well known in California political circles. Less well known are the senator's talents as a humorist and as a writer. The following is an excerpt from Richardson's latest book, What Makes You Think We Read the Bills? *(Caroline House Books, Ottawa, Illinois, $7.95).*

It was a beautiful fall day at Sacramento Municipal Airport. The air was cool and sharp, the sky a rich blue, and all objects could be crisply seen. It was a great day to start on my moose-hunting trip to Canada.

At that time, I was a relatively new legislator. The old guard had condescended to open their inner social circle and had tendered an invitation for me to go hunting with them in Canada.

I was delighted. I thoroughly enjoy hunting, and I welcomed the opportunity to accompany the sages of the Senate into the northern tules.

Right off the bat, I knew this hunt would be different. Usually, I become deeply involved in the planning of any trip with my hunting companions. Half the joy is in organizing the gear, talking, planning the trip, choosing the rations, debating over what weapons to bring, reloading ammo, planning the route of travel, checking the weight of the pack; all of these details are to be savored, discussed, and rethought, right up to the last moment. However, this was not the case in this instance.

Whenever I would ask about any detail of the trip, I would receive the same jovial reply, "Just bring a rifle and hunting clothes. Everything has already been taken care of." Soon I got the impression that further questions were unnecessary and unwanted. I dropped the subject.

I didn't know who was going or how much it would cost me. I had a hunch that some lobbyists would be along to take care of the minor details, such as transportation, food, lodging and money.

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The old-guard senators weren't known for expending their own loot, and there seemed to be plenty of lobbyists around to pick up the tab. I figured it was best to keep my mouth shut and wait — so I did.

A mound of gear

On the appointed day I was the first to arrive. I was pleasantly surprised to see a couple of colleagues who had reputations for hunting (but not for the four-legged variety of animals). They didn't have much gear with them; most carried heavy jackets, small suitcases, and rifles. Several didn't have weapons of any type. I felt sort of stupid next to my mound of gear.

I was loaded for anything. I had a 30.06 Remington with a four-power Bushnell scope, a 30-30 Winchester, a Browning 12-gauge shotgun, a .357-Magnum sidearm, and enough ammunition to quell an uprising of the natives. I had extra foul-weather apparel and survival equipment.

Before long, we were all assembled. It was quite a large crowd. We hadn't long to wait. A twin-engine turbo jet circled into the pattern and was soon taxiing over to where we were all assembled.

It was a large corporate executive jet. There were no company markings on the plane, but once I poked my head inside, I knew it wasn't for packing peons. The interior was all mahogany paneling with posh, soft, brown leather couches and swivel chairs. I felt I was in the office of a corporate president instead of in an airplane.

As we entered, we were greeted by a gentleman I had seen before but had never met. A pleasant chap, he looked and acted

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like a senior vice president — cordial, gracious and dapper. I was sure he was a lobbyist, but for whom I wasn't sure.

The pilot and copilot helped load all our gear into the baggage compartment. After we were all comfortably ensconced in our leather lounge chairs, complete with seat belts, we were off into the blue skies, headed for some unknown spot in Canada.

This was traveling in style. I thought I might as well enjoy it, because I knew it had to get rugged as soon as we arrived. Packing in, horses, saddle sores, riding to some distant pack station deep in the wilderness — I was sure all of this was yet to come. In fact, I welcomed it. But in the interim, if I had to travel to the far north, what a way to go!

As soon as we were in level flight, our Dapper Dan host cheerfully asked, "Anybody want something from the bar?" There was no bar in evidence. One of the senators asked for a Bloody Mary. His request was followed by others. Our host walked over to an immense, custom-built cabinet attached to the wall and opened the top. Underneath were a sink and glasses. He stooped over and opened the doors on enough liquor to inebriate an army.

"Who's for gin rummy?" asked one of the senior Nimrods. We all were.

Gin rummy was a favorite pastime of legislators and lobbyists. Many an evening has been happily whiled away over a game of cards when the Legislature used to meet on a part-time basis. Then legislators usually left their families back in the district. The sessions were short, and a legislator wasn't away from his family except for three or four nights a week, and then for only four to five months at the most. In the evenings, gin rummy was the game to play. There were gin-rummy tournaments going all the time. In Sacramento the game is also known as "Bakersfield."

Most of the men on board ordered Bloody Marys. I opted for coffee. Small tables were secreted within the paneled walls and by swiveling about in the chairs and shifting the couches, excellent and comfortable provisions were made for playing "Bakersfield."

A gourmet buffet was being prepared by our host, complete with breads, cheeses, nuts, sliced meats, relishes, etc.

Landing at 'Prince'

We traveled over California, Oregon, Washington and Canada, drinking, eating, laughing, joking and playing cards. In no time, we were all deeply engrossed in the card game and playing for a half a cent a point. Being competitive, I soon lost track of time and location. The plane was nearly on the ground when we put up the cards. The games were not completed, and so we stuffed our card hands into our pockets, intent on resuming the game later.

I hadn't the foggiest idea where we were. I asked and found out we were in "Prince" something or other. Canadians have a propensity to name many of their towns after some prince — Prince George, Prince Albert, Prince Clyde, Prince Gomez, etc. Unless you know one prince from another, you don't know where you are, even when you are told.

We were hustled into a bus and carted down to the river where several large pontoon planes awaited us. "Now," I thought, "this is more like it. Now we are on our way into the real primitive backcountry of Canada."

We were soon flying over a sea of pine trees interrupted by an occasional lake or meadow. We were definitely on our way into the rugged backcountry. After almost an hour's flight, we were over a hundred miles deep into the Canadian wilderness. On the horizon loomed a huge blue lake, icy cold, lovely and lonely.

We circled an island in the middle of the lake. The plane banked into a tight turn, throttled back, descended and touched down. We taxied to a dock where two Indians awaited.

The pilot unloaded us and the plane was gone as quickly as it had arrived. The wind was crisply blowing across the lake. Small whitecaps could be seen on the windward side of the small island. As I stood on the wooden dock, looking over the lake, civilization

seemed a million miles away.

The cold fall wind cut through the light jacket I was wearing, gently stinging my skin. The air carried the fragrance of pine and clean water. "This is the life," I said to myself. I turned and followed the rest of the body through the pine trees toward some buildings.

As we came closer, I became more and more awestruck. The log buildings were large and extremely well constructed. The logs had been debarked and the wood was varnished. Everything was trim, manicured, and posh. The place reeked of exclusivity.

We climbed the varnished wood staircase onto a large deck that surrounded the main building. The inside was varnished pine paneling with large bay windows, through which one could look out onto the lake. The furniture was hardwood and red leather. The dining room was large enough to accommodate three parties our size.

"Where's the bar?" asked someone. As if by magic, a neatly dressed Indian woman appeared.

"What do you wish to drink, sir?" she asked.

"Who's got the cards?" asked someone. Before we even unpacked, the card game was in full force. But there were still two hours of light left, and I wanted to look around.

An Indian bellhop escorted me to my varnished log cabin. My backwoods tepee had two bedrooms and a large area complete with kitchen, shower, white sheets, blankets, electricity, automatic heaters — a veritable Conrad Hilton North.

I unpacked my rod and fished along the shore for an hour or so — no luck. At dark I wandered back to the main lodge.

The card game was going full blast. The smoke was thick. The smell of booze permeated the air. The game paused while dinner was served. We had a menu and a choice of main courses and fine wines. We had to rough it somewhat — there were no oysters or lobster. Salmon, however, and trout dishes were offered, and the meal was excellent. After dinner the card game resumed.

"When do we go hunting?" I asked. "Those who want to hunt see the lodge manager tomorrow morning at sunup," was the response.

A guide named Pierre

At dawn, only five of us gathered in the main lodge to receive our hunting instructions. The lodge manager was organizing the day's hunt with our guides. We were paired up and assigned to an Indian guide. Since there were only five of us, I got a guide all to myself. I lucked out. I was assigned to the chief of the local tribe. His name was Pierre, no less. Hot dog! I was sure I had moose meat already in the freezer. With an Indian chief named Pierre, how could I miss? Pierre looked and sounded the part. The chief was one of the silent type, complete with folded arms, ughs and grunts.

When he finally spoke, I knew I had a trophy rack for my den wall. "Zenator, lez go down to ze boat and hunt ze mooz."

I eagerly followed Pierre down to the dock. The cold morning wind was exhilarating. The anticipation of the hunt, with my trusty guide, warmed me through and through. At the dock there was no rustic canoe awaiting. Instead, there was a sixteen-foot

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power launch complete with cabin. Pierre started the engine and we were off across the lake.

I anticipated that once we reached the mainland, we would dock the boat and begin to hunt in earnest. The trip across the lake took twenty-five minutes. Instead of stopping, Pierre headed up the river that fed the lake. We were passed by a few Indians in power boats heading in the other direction. Before long, we chugged by a small Indian village. Pierre pointed. "Zenator, zat is my home!" A number of motorboats, adorned with Mercury engines, were docked at the river's edge — not a canoe or a tepee or a totem pole in sight, but square, wooden shacks, roofed with composition shingles. Barefoot, runny-nosed children, and barking dogs abounded.

We proceeded to chug upriver. After about an hour, I asked, "Pierre, when are we going to hunt?"

"We hunt now!" he responded.

"Are we going to pull ashore here?" I asked.

"No, we hunt from ze boat. See mooz along river. Shoot ze mooz from ze boat."

I was shocked. Some hunt! Cruising comfortably along the river, sitting on my derriere, hoping to surprise some moose grazing along the swampy edge of the river. Fortunately, we saw nothing but beautiful scenery.

After a while, I suggested we fish, instead. Believe it or not, that turned out to be a bummer also. The river was teeming with lethargic, spawning salmon, and we were constantly hooking them accidentally in the side. The poor souls were on their last legs and, if caught, were worthless to eat.

We headed back to the lodge earlier than I had anticipated. Oh, well, I said to myself, we still have three days to go. Things will be looking up.

When I arrived back at the lodge, the card game was in full swing. The lodge was full of smoke and the smell of booze. No one even looked up to wave.

I asked the manager if I could hunt on foot the following day. "No problem," was the response. The next morning a plane awaited Pierre and me at the dock. We were whisked into the air and within fifteen minutes were deposited on the shore of a small lake deep within the forest. We arranged to meet the plane slightly before dark at the same spot. The plane took off, and Pierre and I were alone, deep in the wilds of Canada.

The terrain was deeply timbered. The area most likely to hold the moose was the marshy tributaries on the other end of the lake. We would have the difficult job of working our way around the lake to the far shore through the dense timber. Hardship or not, at least I felt as if I were hunting! It started to drizzle and the rain was cold.

I soon began to have big doubts about the success of our hunt. Pierre, my trusty Indian guide, kept falling down and tripping over logs, rocks and twigs. I had never seen such a clumsy Indian. He was noisy, to boot. I have never been known for my silent stalking ability, but compared to Pierre, I was the master. He made noise leaning up against a tree. My worst fears were confirmed when, later in the day, I had to help him start a fire. Pierre was a country-club Indian guide. I doubt that he had many requests to leave the comforts of the powerboat and stomp his way through the wilderness. Pierre didn't look too happy about having to guide this crazy paleface.

After Pierre had fallen from atop a large rock, ricocheted off a log, and finally come to rest in a batch of blackberry bushes, I couldn't help thinking that I had better start paying attention to where we were. This turkey guide could get us both lost! I could tell that Pierre wanted to go back and wait for the plane, but I was determined to continue hunting.

We finally worked our way around the lake to its headwaters. We spotted a cow contentedly grazing among the lily pads; however, no bull moose was in sight.

Pierre was, by this time, mumbling French-English-Indian four-letter adjectives under his breath — "Sacre bleu," "Got tam!" We stumbled and sloshed our way around the lake. We crashed through a stand of lodgepole pine, tripped through some quaking aspens, and suddenly found ourselves staring at a cow moose belly-deep in lily pads some hundred yards before us.

Cows weren't in season, and I had no intention of shooting one, anyway. I wanted a bull moose and, besides, removing a drowned cow from four and a half feet of water is no joy — and with Pierre along, the job seemed doubly onerous.

"Well, Pierre," I whispered, "what should we do now?"

"Zenator, we wait."

"Why?"

"Maybe," he smiled knowingly, "just maybe, ze cow in in ze mood for love and ze big bull will come along. Zen we shoot ze papa mooz!"

We hunkered down behind some bushes and waited and waited. The cow kept munching on lily pads and underwater grass. The drizzling rain had by this time found its way into every corner of my apparel. We tried to keep as quiet as we could, but any silence we accomplished by nonmovement was overcome by Pierre's chattering teeth.

We watched the cow consume an enormous amount of food before Pierre turned to me and with teeth chattering said, "Zenator, maybe zis cow is not ready for ze love." His lips were blue. Pierre was a game Indian, but one cold Canadian Canuck.

"Pierre," I said, "let's head back to where the plane is to pick us up and fix a bite to eat." He was obviously pleased. He grunted approval and commenced to crash his way back.

On arrival, Pierre fumbled around, unsuccessfully trying to start a fire. I rummaged around and found some pitch bark, and we soon had a roaring fire. Together, we warmed ourselves until the plane arrived.

We were still cold and numb when we arrived back at the main lodge. As I walked by, the card game was in full force. The dining room was again filled with the smell of booze and cigar smoke. Again, I was hardly noticed.

Up the river again

The next morning Pierre and I were back in the boat, cruising up the river, looking for ze mooz. By this time Pierre and I had become friends. We had a few things in common. He was chief of his tribe — elected, no less. I was the elected leader of the nineteenth-district tribe of California. It seems that amongst Pierre's constituency, the dude who can get the best deals for the tribe from the Canadian government is the ranking Indian. Pierre was a diplomat, and his tribe elected him chief because of it. What irony! I had traveled thousands of miles to get stuck with a politician as my guide.

Pierre was also a compassionate man. He observed that my desire to hunt the moose was real. As our friendship grew, he became more committed to finding me a bull "mooz."

This day was also a total loss. As darkness fell, Pierre knew there was only one more day left to hunt.

"Zenator," he blurted, "you will not shoot ze mooz unless you are ze first man on ze river in ze morning. We cannot leave ze lodge in ze middle of ze lake and get to ze river before my tribe has already shot ze mooz." *(continued)*

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It suddenly dawned on me. All of those Indian boats we had been passing had already been up the river for "ze mooz." And any white face that saw a moose to shoot at was fortunate indeed. The Indians from Pierre's village had picked the river clean.

Pierre continued, "Zenator, why don't we stay at my cousin's cabin on ze river and get out on ze river and shoot ze mooz first thing dawn come."

I thought about my colleagues back at the lodge and wondered what they would do if Pierre and I didn't show up for dinner. But I assumed they would conclude we were all right. It was a correct assumption. They didn't stop shuffling the cards long enough to check.

We chugged upriver for what seemed to be hours. It was pitch black when we spotted the lights of Pierre's cousins's cabin. The lamplights of the house silhouetted Pierre's cousin and his family as we trudged up from the dock.

"Hallo, Pierre," shouted Pierre. "It is I, Pierre!"

Pierre's cousin, Pierre, had constructed a small, bare wooden shack with a galvanized roof next to his home. Two single bunk beds were in the corners, and a small wood stove leaned against the wall. The rent was five bucks. After twelve hours in the boat, it looked like the Waldorf-Astoria. We purchased two cans of beans and a half loaf of bread from Cousin Pierre. He threw in a cup of coffee grounds, gratis. We warmed the beans in the cans, made coffee on the top of the wood stove, and feasted.

Pierre's cousin joined us in conversation. A few moments later, two of his children entered the room. Both stood silently and expressionless before us until, minutes later, their papa recognized their presence. "What you want, huh?" asked Cousin Pierre.

The older one was about four and a half years old. The younger was about three. The younger had a dirty towel over his shoulders; both wore only dungarees without shirts or shoes. It was early fall and the evening was drizzly cold, but the cold didn't seem to bother them. Both had runny noses.

"Papa," responded the older, "Pierre has a hook stuck in his back." (Believe it or not, the younger's name was Pierre also). Until that time, I had heard three Indian names, and they were all Pierre.

"Ugh," grunted Cousin Pierre. "Come here and let papa see." The two walked toward their father and stood before him.

Cousin Pierre and Chief Pierre were sitting next to each other on a bench. I was in a chair next to them. The older boy turned little Pierre around and removed the towel. Deeply embedded in his skin was a large treble hook attached to a large four-inch fishing plug. Two of the barbs were completely under the skin. The father didn't say a word, but grunted matter-of-factly. He reached out and grasped the plug and jiggled it a few times. The kid didn't bat an eye.

"Hey, dot's in real goot," offered Chief Pierre.

"Ugh," replied Cousin Pierre. He jiggled the hook once again, testing how deep it had embedded itself into his son's back.

Once again the Indian boy remained silent.

I am the father of three children, and if any one of them had a treble hook stuck in his back, the screams would be recorded on the world's seismographs while his mother demanded treatment at the Mayo Clinic. Here this kid stood stone-still while his father played around with the hooks.

It's true, I thought to myself, Indians are braver and never cry. I was deeply impressed with the stoic behavior of the entire family.

"Hey," advised Chief Pierre, "you better push ze hooks through ze skin and file off ze barbs, zen pull it out.

The father stood up and took his small son by the hand and led him out of our shack to their cabin. I never did find out how the hooks were extracted. I heard no cries coming from the cabin.

'Great therapy'

The next morning Pierre and I had the first boat on the river. Still no luck. I did see one heck of a lot of Indians in powerboats cruising up and down the river at dawn's early light.

After another unsuccessful day we headed back to the lodge. We stopped off on the way so Pierre could see Cousin Pierre about some private matter. I saw little Pierre tightly clutching a wiggling kitten to his chest. Next to him was an overturned fishing boat on the beach. Little Pierre tripped and dropped the kitten, which immediately sought refuge under the boat. The lad let out a scream that would have deafened a bull moose. Tears streamed down his face as he ran, crying, into the arms of an older sister.

I was dumbstruck. No tears with a treble hook stuck in his back, but a flood of anguish over the temporary loss of a kitten. Kids are kids the world over.

The sun had settled as we made it back to the island lodge. I bade a fond adieu to Pierre, retired to my cottage, showered, and changed into clean clothes. I hadn't eaten since the night before and was starved.

The lounge was filled with smoke, and drinks adorned the card tables. The game was still in full swing.

The trip back was a repeat of the trip up. Once the plane was off the ground, the bar opened and we played cards all the way back.

As we departed the plane in Sacramento, one of my colleagues, who had never left the lodge, stretched and yawned. "Bill, it's great therapy to go into the great outdoors to relax. I feel like a million bucks. It's just wonderful what a hunting trip can do for a man!"

He really meant it. Hard as it is to believe, I still don't know who the host was. What meager contributions I made to the trip couldn't have covered all of the expenses.

Trips like that are a thing of the past. A hopperful of new laws have been passed to restrict California lobbyists from buying a legislator a hot dog without reporting it, much less a hunting trip to Canada. However, special interests will find, and have found, other ways to snuggle up to their favorite solons. Let's face it. What flimflam man could pass up a mark with an eighteen-billion-dollar bankroll?

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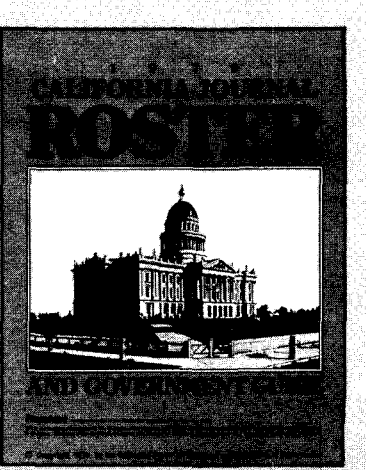

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Forecast from Lowenstein: campaign-finance scandals ahead

By DANIEL H. LOWENSTEIN

Dan Lowenstein, chairman of the state Fair Political Practices Commission, is about to leave state government and enter the field of teaching. (By law, he was limited to a single four-year term as FPPC chairman.) In the following article, he evaluates the successes and failures of the Political Reform Act and assesses future needs in the field of political reform.

In the statewide ballot pamphlet for the June 1974 election, the proponents of Proposition 9 (the Political Reform Act) wrote that "Proposition 9 will establish standards which give citizens a basis for the faith and trust which must lie at the heart of our political process."

Several months later, the *California Journal* published an article whose tenor was well summarized in its title, "Minority Opinion: Political Reform as a Danger to Democracy."

After four years of experience under the Political Reform Act, it should come as no great surprise to most people that the truth has fallen well between these rather extravagant projections. Although it is questionable whether citizens have even as much "faith and trust" in the political process now as they had in 1974, the Political Reform Act has opened up important aspects of that process to public scrutiny. And there has been a solid record of accomplishment in most of the discrete areas covered by the act. Although our democracy, with all its problems, has proved far too hardy to be at all endangered by this or any comparable measure, the act has undoubtedly caused some headaches for some of the participants in the democratic process.

As one of the drafters of the act and as the first chairman of the Fair Political Practices Commission, my four-year term of office has been a period of considerable satisfaction. I believe that, by and large, the act has worked about as well as and in some cases better than could reasonably have been expected, and that the commission itself is off to a good start. The many difficulties that have arisen have been sufficient to provide challenges, but not so great as to drive either the act or the commission off course.

A victim of success?

My satisfaction is not complete, however, for at least two reasons. First, there is a danger that in subtle ways the commission may become a victim of its own success. As the act works more and more smoothly, and as the commission is increasingly accepted by the Legislature and others in government and in politics, it will become harder for the commission to preserve itself as a dynamic force in state government and as a focal point for the reform impulse.

Second, while the disclosure objectives of the act have been substantially accomplished, the underlying problems — particularly in the area of campaign finance — have gotten even worse in the last several years. Disclosure has served both to ameliorate some of the worst symptoms of the campaign financing illness and to refine greatly our diagnosis, but there is no cure in sight. In short, although most reform proposals that go beyond the measures contained in the act raise difficult questions and are likely to be controversial, the need for reform is as great as ever.

Those portions of the act that have probably demanded the most time of the commission and its staff have been the financial disclosure and conflict of interest provisions (chapter 7 of the act). The disclosure requirements are broad for 1970 *Carmel* decision of the California Supreme Court, the decision of the California Supreme Court, the requirements imposed on lower-level officials must be more narrowly designed to relate to each official's actual responsibilities. The act complies with the *Carmel* decision by requiring each agency to adopt its own conflict-of-interest code, which sets forth specific disclosure requirements for each official. Codes of virtually all state agencies and some local agencies are reviewed by the commission.

Developing guidelines for conflict-of-interest codes proved to be difficult. Indeed, it took almost a year, starting in late 1975, simply to write and then rewrite the regula-

'Daniel Lowenstein is retiring, Mr. Bigbucks; shall I order another dartboard?'

Cartoon by Dennis Renault, Sacramento Bee

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tions governing the codes. Eventually, however, the commission developed a high level of sophistication in this field and was able to approve the codes relatively smoothly. In some cases, the commission had to impose stricter requirements on agencies which were either opposed to the law or, in our judgment, insensitive to the public's need for protection. Much more frequently, however, we had to narrow down disclosure requirements which were too broad, either because of laziness (broad disclosure requirements are usually easier to draft than narrow ones) or because of a desire on the part of some agencies to "bend over backwards" to prove their purity.

Although the financial disclosure requirements have been objectionable to some officials, they almost surely sensitize many officials to the importance of ethical conduct. It seems to be a part of human nature that we are much more skeptical of the motives of other people than we are of our own motives. However, we are more likely to apply the higher standards to ourselves that we would apply to others when the facts of the situation are generally known.

A dramatic illustration of the sensitization that disclosure can bring about was contained in a letter sent to the commission by a member of the Court of Appeal shortly after the disclosure requirements were extended to judges. He said that it occurred to him, following his disclosure that he owned stock in a major utility, that numerous cases in which that company was a party came before his court. Accordingly, he had decided to sell his stock.

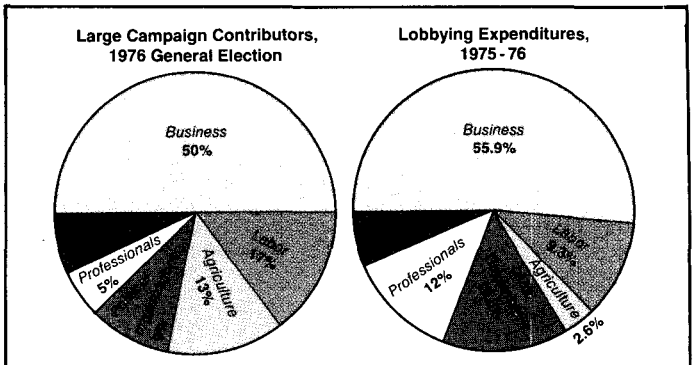
Thorny issues

Although disclosure is the act's most important weapon against conflict of interest, the act also requires officials to disqualify themselves from official decisions when they have a conflict. The application of the disqualification provisions has brought many thorny issues before the commission. For example, is it a conflict for a building supply dealer to vote to repeal a moratorium on water connections for new construction? For a realtor to vote for a new redevelopment project? Or for a landlord to vote on a rent control ordinance? These and many similar questions are difficult because they require balancing the important interest in impartial decision-making against the equally important democratic interest in having duly elected or appointed officials make the decisions they were chosen to make.

In at least one respect the disqualification requirement has proven to be a blunt instrument. Many if not most governmental bodies in California require an absolute majority or two-thirds majority of all the members of the body, rather than of those voting, in order to pass a proposition. This means that the disqualification of one member has the same practical effect as a negative vote by that member. Attention should be given in the future to devising mechanisms to assure that the effect of the disqualification provision will be neutral, as it was intended to be.

A second major area of the Political Reform Act is the regulation of lobbying. On the whole, California has enjoyed one of the most honest, efficient and creative governments in the United States since the political reforms of the Progressive era. But we have had a perennial problem with abusive lobbying practices. When Proposition 9 was adopted, the colorful days of lobbyist Artie Samish — who called himself "the governor of the Legislature" — were long gone. But lobbying practices still resembled those described by a Sacramento grand jury in Samish's heyday:

"In short, the basis of the [lobbying] method is to acquire influence with a group of legislators through campaign contributions or other favors and then to sell that influence to industries concerned with legislation. If it is the fact that influence of this type probably is limited to a relatively small number of legislators, in the case of any one lobbyist, it is likewise true that on most controversial bills there is a natural division on the merits of the issue. Hence, a small number of 'influenced' votes can prevail. The operation is typically that of a middleman, standing between the lawmakers and the business interests, telling each that it can deal only through the middleman-lobbyist."



As these two charts indicate, lobbying expenditures closely parallel large campaign contributions in California. The major exception is local government, which lobbies but cannot contribute to candidates. The two charts, compiled from FPPC statistical reports, would be even more similar had it not been for the presence of the farm-labor initiative (Proposition 14) on the November 1976 ballot, boosting agricultural contributions. The lobbying figure for professionals may also be unusually high because of the prominence of the medical malpractice issue before the Legislature during the session in question.

The act dealt directly with the most crude practices by prohibiting lobbyists from making gifts over ten dollars per month and campaign contributions to state officials. These prohibitions, especially with regard to gifts, have been surprisingly effective, and the typical relationship between legislators and lobbyists seems to be much more businesslike than it was before.

Ironically, the success of the prohibitions has reduced the interest that might otherwise exist in disclosure by lobbyists. The overall amount spent by various groups on lobbying is a useful indicator of political activity and influence, but the specific manner in which the money is spent — so much for rent, clerical help, travel, etc. — is of little importance once substantial gifts and contributions have been eliminated. Accordingly, the monthly reports filed under the act by the lobbyists and their employers have received little attention from the press and public, and the commission has acted to simplify these filings.

On the other hand, the report compiled by the commission entitled "$40 Million to Influence California Government" aroused widespread interest. The report summarized the monthly filings and for the first time presented a clear picture of who spends how much on lobbying. The picture presented by the report was distressing because it showed that — even if present lobbying practices are entirely proper — there is a vast inequality in the resources devoted by various groups to influencing government.

Perhaps the most striking fact about the lobbying report is the close similarity between the percentage of spending by categories of interest groups (business, labor, etc.) and the percentage of large campaign contributions made by the same categories. The only significant exception is local government, which lobbies but does not make campaign contributions. This similarity suggests that the inequality of resources devoted to lobbying is greatly compounded by the added influence the big spending groups presumably gain from their contributions.

The goals of lobbying reform should be to assure that officials are cognizant of the needs and interests of all groups, including the public at large, not merely or predominantly those groups that lobby heavily; and to encourage an arm's length rather than a too-friendly relationship between officials and professional lobbyists. Although the act has

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been a step in the right direction, it is questionable whether additional lobbying regulation can bring us much closer to these objectives.

Probably the most significant lobbying reform in the history of California was not the Political Reform Act but the professionalization of the Legislature in the 1960s under the leadership of Jesse Unruh, especially the provision of a professional staff. Although admittedly the reformed Legislature has bred its own abusive practices, such as the use of staff for political campaigns, the existence of the staff makes it possible for a conscientious legislator to function independently of the major lobbying organizations.

Financing campaigns

The final area addressed by the act is campaign finance. The act as approved in 1974 would have imposed spending limits in statewide elections, but these limits were struck down in the wake of the United States Supreme Court's decision in *Buckley v. Valeo*. The spending limits would have prevented what must have been one of the most unfair election campaigns in history, the November 1978 Proposition 5 campaign, involving the "non-smokers' rights" initiative. The opponents of Proposition 5 spent at least $6 million, which easily broke the previous record for spending by both sides and was almost ten times as great as the amount available to the proponents. Ninety-seven percent of the opponents' funds came from five out-of-state tobacco companies and the Tobacco Institute.

The Proposition 5 campaign thus made a mockery of the argument that is sometimes offered — namely, that money in campaigns is a benign influence because it permits democracy to reflect the "intensity" of individuals' opinions. Many more people contributed in favor of Proposition 5 than against it, and yet the opponents vastly outspent the proponents.

While the spending limits would have been beneficial in the case of the Proposition 5 campaign, they were undeniably complex, and no one can say for sure how they would have worked in practice. At any rate, the main thrust of the act in the campaign finance field is and always has been disclosure. The act requires candidates, campaign committees and large contributors to disclose their finances in detail. The level of compliance with the law has been extremely high. One might think compliance could be taken for granted, but historically the opposite has been true. California first adopted a campaign disclosure law in 1893, but as recently as the early 1970s that law was virtually ignored. Most politicians bitterly resisted modernizing the law or even enforcing the old law, and the conventional wisdom was that campaign disclosure was a great idea in theory but could never work. The turnabout in the last six years or so has been spectacular.

Unfortunately, the same bright picture cannot be presented as to the substance of the information that is disclosed. People who follow politics have become all too familiar with the litany that is freshly documented by every campaign report issued by the commission: the continued escalation of campaign costs; the inability of most candidates to raise more than a fraction of the funds they need in small, broad-based contributions; the increasing domination of campaign finance by "political action committees" and other organizations whose financial interests are significantly affected by actions of the Legislature or state government generally; the channeling of most of these special-interest funds to incumbents, who for this and other reasons, become almost unbeatable.

Most large donors view their campaign contributions as investments, and there is every reason to believe they receive a handsome return. The *San Diego Tribune* correctly editorialized about one of the commission's reports that it was "a massive indictment of the present system of financing legislative campaigns with private funds." While most public officials are or would like to be reasonably honest, they are trapped in a system of campaign finance that is inherently corrupting.

It is probably true that the public is now less conscious of the campaign finance problem that it was in the mid-'70s, during and immediately after Watergate. But government must respond to the pressure of events as well as to public pressure. If my analysis is correct, the increasing contradictions in our campaign finance system will generate continuing scandals and heightened discomfort for politicians, until the pressure for additional reform becomes irresistible. When that happens we will be forced, Proposition 13 notwithstanding, to give serious consideration to public financing of election campaigns.

The continuing debate

While few readers may agree with me on all of the foregoing observations, there may be consensus on at least two general points:

- Most of the immediate objectives of the Political Reform Act have been accomplished. To be sure, problems have arisen and continue to exist, but the major programs are either in place or in sight, and the basic implementation of the act is no longer the major challenge that it has been for most of the first four years.
- The ultimate objectives of the act — an equal voice for all citizens in government and politics, and honest and impartial public administration — are in the nature of ideals, which we may approach or which may recede, but which are never either entirely realized or entirely lost.

If the commission does not keep in mind and continually strive for these ultimate objectives, its administration of the act is likely to become mechanical, inflexible, preoccupied with detail and, finally, irrelevant. My successor's greatest challenge will be to continue and to improve upon the day-to-day implementation of the act, while at the same time keeping the commission at the forefront of the continuing debate over reform issues.

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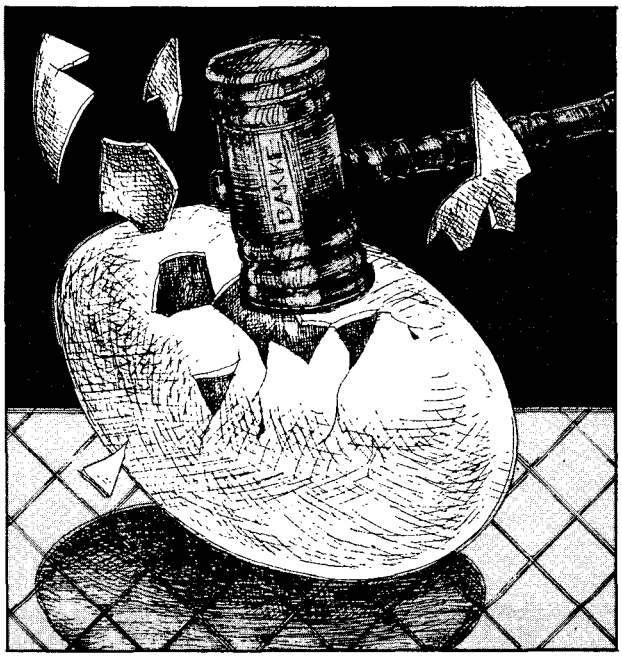
COMING NEXT: THE 'BAKKE OF BUSINESS'

The confused legal state of affirmative-action programs

By STEVEN PRESSMAN

The battle over affirmative action in California is likely to continue long after Allan Bakke finishes his studies and becomes a doctor. Bakke is, of course, the Sunnyvale engineer who became a folk hero to some and an arch villain to others during his four-year legal quest to gain entrance to medical school at the University of California's Davis campus. He achieved his goal when the U.S. Supreme Court ordered him admitted last June, but a host of other state and federal courts are still grappling with the problem of increasing employment and education opportunities for minorities and women while preserving the rights of white males.



In past years, it has been civil rights groups representing minorities and women who have gone to court to combat discrimination and seek affirmative action programs in schools and corporations. Today, however, the concept of reverse discrimination — catapulted by Bakke onto the front pages of the nation's newspapers — is gaining so much force that minority and women activists fear the courts are shifting away from their pro-affirmative action stance of the 1960s and early 1970s. Affirmative action proponents, worried about the consequences of such a trend, have become alarmed over a string of adverse decisions handed down by various courts during the last several months:

- In its historic *Bakke* decision last June, the U.S. Supreme Court ruled that the UC Davis Medical School had violated the white applicant's civil rights by denying him admission while reserving 16 spaces for minority students, some of whom had lower test scores and grades then Bakke. A narrow majority of five justices, however, sanctioned the use of race in achieving student body diversity.
- Last October, U.S. District Judge A. Andrew Hauk in Los Angeles struck down a section of the 1977 Public Works Employment Act requiring at least 10 percent of the funds appropriated under the statute to be awarded to minority contractors. The U.S. Supreme Court in July vacated a similar ruling by Hauk issued in 1977, but declined to review the case because the federal funds in Los Angeles had already been spent. The case is again being appealed.
- The state's First District Court of Appeal in December reversed an Alameda County Superior Court order requiring the Oakland Fire Department to hire two minorities for each Caucasian hired and promote minorities in a 5 to 1 ratio to whites. Relying on the *Bakke* decision, the Court of Appeal said the minority plaintiffs did not prove they had been the victims of discrimination, thus making unlawful the lower court's affirmative action order.
- One month later, the First District Court of Appeals invalidated Berkeley's citywide affirmative action program for bringing city employees into racial and sexual parity with the city's population. Citing Bakke, the court said *(in Hiatt v. City of Berkeley)* the kind of quota system used in Berkeley was clearly invalid and that disproportionate representation of racial groups was not direct evidence of discrimination against those groups. The court also noted that less drastic means, other than a rigid quota system, could be effective in raising the number of women and racial minorities in the Berkeley city work force. Any classification by race or sex for purposes of preferential hiring would be subject to "strict judicial scrutiny," according to Justice Robert Kane, who wrote the unanimous opinion.

The U.S. Supreme Court will again take up the delicate affirmative action issue when it hears oral arguments later this year in the case of *Kaiser Aluminum and Chemical Corporation v. Brian Weber.* Last year, the Fifth Circuit Court of Appeals upheld the charge by Weber, a white lab analyst at Kaiser's Gramercy, Louisiana plant, that he was a victim of discrimination when minority employees with less seniority were selected over him for a training program under a voluntary affirmative action program adopted by Kaiser. The case is being billed in some quarters as the "Bakke of business."

But many corporation and education officials in California are downplaying the impact of the various affirmative action-related decisions and are insisting their own efforts will continue in a business-as-usual fashion. "Employers are actively pursuing affirmative action and I'm sure they will

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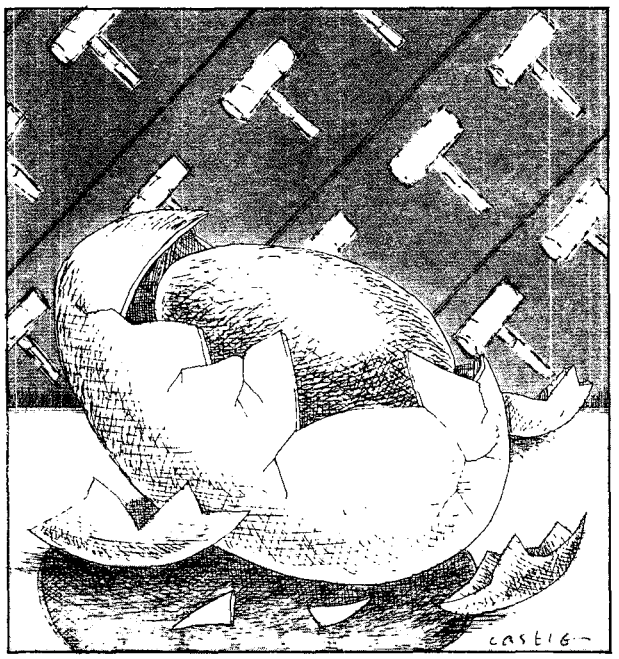
continue to," says Ernest L. Miller, vice president of the Southern California Merchants and Manufacturers Association. "If all the laws regarding discrimination were stricken from the books tomorrow, the concept of equal opportunity would continue to exist."

Others, meanwhile, are interpreting the court decisions as a dangerous warning signal that threatens to wipe out the gains achieved by minorities and women over the last several years. "It's more than an effort to reverse those gains. It's an effort to seize the offensive and push back further than where we used to be," says Virna Canson, NAACP's West Coast regional director. "It's an effort to convince the victims that they deserve to be victimized." She notes the "chilling effect" of the Oakland Fire Department ruling and the minority contractors decision in Los Angeles in which, she says, the judge "regurgitated *Bakke* over and over again." "Simply raising the issues involved in *Bakke* and *Weber* has that chilling effect," according to Robert Hine, equal opportunity manager at Southern California Edison Company.



Despite her concern about the court trend, Canson takes some consolation by noting that the Supreme Court, in its *Bakke* decision, did not shut the door on race-conscious admissions policies that consider racial diversity as desirable. Most law and medical schools that had to abandon minority quotas have now replaced them with "goals" or "targets" that equal the number of their previous minority slots. Minority students and some faculty members, however, are still predicting a drop in minority enrollments now that quotas are out. They recognize that the *Bakke* decision gives schools enough flexibility to continue minority admissions at present levels, but they fear that additional *Bakke*-type suits may temper the schools' commitment to continue affirmative action programs.

There may be something to that fear. A white Boalt Hall law student has filed a suit in federal court challenging a Berkeley financial aid program designed exclusively for minority graduate students. A white corrections officer has entered a suit against the California Department of Corrections for going overboard in its affirmative action hiring and promotion policies. A San Francisco Superior Court judge has upheld that charge.

Business representatives insist that the spirit of affirmative action remains intact, but some candidly add that the current backlash attitude could jeopardize what little gains have been made. "As soon as employers see some slack, they will tend to take advantage. They still need to have a strong hand held over them," says Richard Hernandez, administrator of industrial relations at the Vinnell Corporation, a worldwide construction conglomerate headquartered in Alhambra. "Some progress has been made, but I would have to agree that a lot of it is tokenism and a means of improving the corporate image." A decision upholding Weber in the Kaiser case might be a further chink in the armor of affirmative action. "If there is a decision which says voluntary programs should be scrutinized more carefully, some companies will retreat somewhat from things they are doing now," remarks Frank J. Quevedo, affirmative action director at Hunt Wesson Foods in Fullerton.

One problem facing both business officials and education admissions officers at the moment is not knowing just what they can and can't do in affirmative action. "We just don't know and we will not know until the Supreme Court decides *Weber*. And even then we might not know," says Quevedo. The same is true in education. The grab-bag result of six different opinions issued in the *Bakke* case last June has left law and medical school deans scratching their heads over just what the high court had in mind. "There are a lot of legal scholars making a good living these days just going around the country trying to explain the *Bakke* decision," quips one California law school official.

To help ease some of the confusion for employers, the Equal Employment Opportunity Commission recently issued guidelines for voluntary affirmative action programs. The guidelines are intended to offer employers some insulation from reverse discrimination suits, but businesses will probably proceed very cautiously until the *Weber* case is decided. Francisco Cancino, assistant general counsel for the EEOC regional office in San Francisco, thinks employers can safely abide by the guidelines, at least for now, but hesitates to pass final judgment on their legality. "I'm not a Supreme Court justice. Put me up there and I might give an answer," he says.

Pattern of the past

Most attorneys, as well as business and education officials, agree that measures to increase the number of minorities and women in schools and jobs are legal when past discrimination against them can be proven. Civil rights groups in California were startled, then, when San Francisco Superior Court Judge Byron Arnold last year ruled that evidence of both past and present discrimination still did not justify an affirmative action plan by the California Corrections Department. Similarly, the Court of Appeal held that evidence of past discrimination was not enough to justify a quota system for hiring and promoting in the Oakland Fire Department.

James S. White, the Oakland attorney who represented the plaintiffs in their suit against the fire department, is holding out hope that the California Supreme Court will reverse the lower appeals court, despite their 6-1 ruling in favor of Allan Bakke in 1975. White thinks the political attitude of the high court might have changed now with the subsequent post-Bakke appointments of Chief Justice Rose Bird and Associate Justices Wiley Manuel, a Black, and Frank Newman.

Other attorneys who have litigated affirmative action-related cases in California courts, however, are not so sure that the traditionally progressive courts here will now look favorably upon claims by women and minorities. "The respect for the courts in the minority community, as it relates to their interests, is very low right now," says Robert Gnaizda, an attorney with Public Advocates who is representing the NAACP in the corrections officer case. And even if minorities do find a receptive ear in the state courts, he adds, they believe the odds are against them in the nation's highest court. "There isn't a loser today in a successful af-

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firmative action case who doesn't know he has a fighting chance in the U.S. Supreme Court." If the higher courts allow Judge Arnold's decision in the corrections case to stand, Gnaizda warns, "the doors of the courtrooms will be totally closed to minority rights."

A case currently before the U.S. Supreme Court, involving a minority hiring quota system by the Los Angeles Fire Department, may be in jeopardy now because attorneys preparing the suit inadvertently omitted past job applicants as a party to the class action suit. During oral arguments presented before the court last December, the justices implied from their questioning that the omission of previous applicants may leave the remaining plaintiffs, comprised of present and future applicants, without any standing to sue.

The case arose from a challenge to a written exam to rank job applicants which Blacks and Hispanics generally did poorly on. In 1977, the U.S. Ninth Circuit Court of Appeals upheld a lower court order setting the quota to make up for past discrimination. But the test had not been used since 1969, which prompted the Supreme Court jurists to dwell on the need to include past applicants in the original suit.

Proposition 13's effect

The challenge to affirmative action programs also appears to be gaining a boost in California as a result of the government financial crunch imposed by the passage of Proposition 13. The hiring and promotion freeze in Los Angeles, ordered in the wake of the tax-slashing measure, threatens to undermine the gains by minorities and women in that city over the last few years. Mayor Tom Bradley recently received an award by a group of public administrators for promoting affirmative action, but if layoffs become necessary because of budget cuts, the last-hired, first-fired doctrine will surely mean pink slips for minority and female employees.

Even if hiring picks up in the future, tighter budgets could mean less for affirmative action recruitment programs, according to John Driscoll, Los Angeles' general manager.

There are apparently several reasons for the growing anti-affirmative action movement throughout California and the rest of the nation. Among them:

• ***Unqualified minorities.*** Part of it, according to some observers, has occurred from instances where affirmative action has become linked to a preference for unqualified minorities and women by schools and employers who say they can find no other way to comply with affirmative action requirements. "So-called affirmative action has attempted, in many instances, to force the hiring of minorities and women even though they don't have the qualifications or training, just to provide an environment of artificially created equality," says Miller of the Merchants and Manufacturers Association. "I don't think that preference is really necessary now and it's becoming more and more unfair."

Minority and women's groups argue that unqualified applicants are not taking anything away from white males. In fact, they contend, many women and minorities are overqualified for the jobs they are receiving under affirmative action programs. The assault on affirmative action, instead, is now increasing because some small gains have been made to close the gap between white males and under-represented groups. "The real challenge is because progress is being made," says Joel Contreras, employment litigation director at the Mexican-American Legal Defense and Education Fund. "There wouldn't be any reverse discrimination charges if there wasn't some progress."

• ***Friction among liberals.*** Still another cause for the white backlash sentiment may be the mounting friction among various segments of the coalition of liberal groups who united under the civil rights banner in the 1960s. Prominent among the defectors in the *Bakke* battle were major national Jewish organizations such as B'nai Brith and its Anti-Defamation League. Such groups have long been suspicious of quotas for their historical ability to exclude Jews who, today, are abundantly represented in law and medical schools.

Virna Canson, of the NAACP, says the liberal coalition never successfully bridged the gap from pointing out civil rights problems to remedying the situation. "It issued high-sounding statements but they didn't bring Black children into the classrooms or Black PhDs into competition for jobs," she says. "What reverse discrimination suits are showing us is that we have no permanent friends," says Willis Edwards, a Black administrative assistant to Democratic state Senator Diane E. Watson of Los Angeles.

Guarded optimism

Despite some ominous trends signaling an offensive against affirmative action, some observers think the attack could stimulate a renewed push by civil rights groups. They insist that the American people still firmly believe in measures to increase the number of minorities and women in classrooms and work places. "While affirmative action is in jeopardy now, the timing of those who would try to destroy it is off," says NAACP's Canson. "It is ingrained in the minds of the American public."

Not everyone is as optimistic, however, and some attorneys active in the civil rights field are wary over the ability of women and minorities to gain proper redress in the courts. There is growing talk of the need for minorities and women to flex their political muscles, potentially an explosive force in California as the state rapidly approaches a third-world majority among its citizens. So far, with only a few exceptions, minority groups in the state have not made significant gains in the political arena; they remain severely underrepresented in the halls of local and state government, as well as in the vast federal structure.

As long as that's the case, the courts are sure to continue as the focal point in the continuing struggle over affirmative action. Eyes are focusing eastward in anticipation of the U.S. Supreme Court's disposition in the *Weber* case, although many think the judgment there might be as ambiguous as the *Bakke* decision. If that happens, says a Bank of California executive, "it would be like throwing a Nerf ball. It wouldn't really do anything."

In addition to the courts, the direction of affirmative action will remain within admissions offices and corporate boardrooms. There wide discretion is still held on how to best address — or ignore — the problem of minorities and women and disgruntled white males. The number of Black lawyers and doctors in California is slowly rising, but is still far behind the proportionate number of whites in those professions. State personnel officials point with satisfaction to their affirmative action gains, but few women and minorities have broken into the upper managerial ranks and their average salaries still lag behind their white and male co-workers.

What the law allows

The business and education officials promise that they will do as much as the law allows. To date, the U.S. Supreme Court has neatly avoided setting down the precise do's and don't's in affirmative action which has enhanced the cautious approach taken by employment officers and college deans. In the absence of a Supreme Court decision, meanwhile, California court decisions and a shifting political attitude seem to be taking their toll.

"Somewhere in the next couple of years, the Supreme Court will have to sit down and make a ruling," says Donald Collier, president of the Southern California Minority Contractors Association. "And when it does, I don't think that ruling is going to exclude minorities and women."

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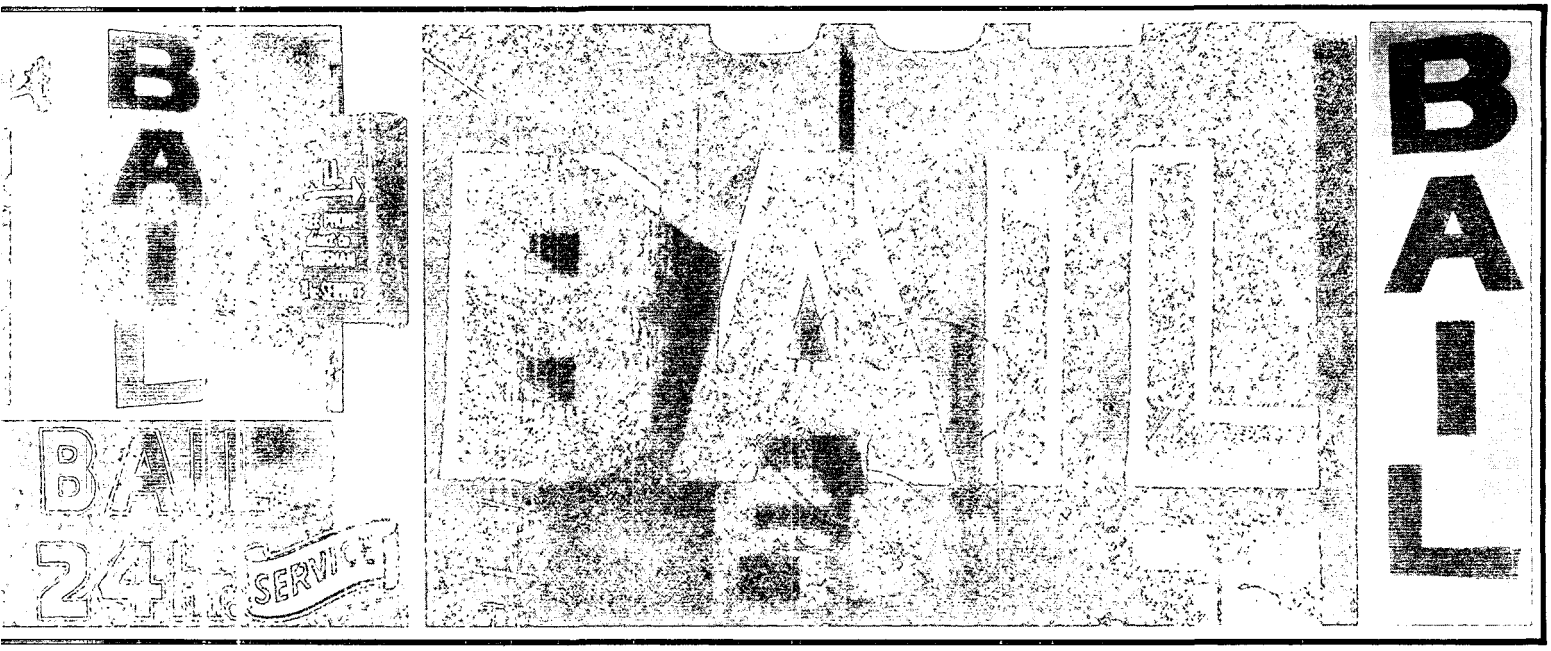

EVAN NOSSOFF

The drive to kill the bail-bond business

By Hal Rubin

The long-standing controversy over bail reform in California could be reduced to white hats and black hats, with the implication that nothing can stop an idea whose time has come — except a powerful and well-heeled lobby. That would oversimplify a complex issue.

Yet inequities and injustices have long existed in the traditional bail bond system. For at least 50 years lawyers and jurists have been writing texts and articles about "checkbook justice" and urging a variety of remedies. Kentucky, Oregon, Illinois and the federal government have already enacted bail-reform measures.

In California the Legislature has wrestled with bail-reform bills nearly every year for the past decade. But this year is different, because Governor Jerry Brown has made the issue a top-priority goal of his administration. The bill this year is AB 2, introduced by Speaker Leo McCarthy and Assemblyman Howard Berman.

The central provision of AB 2 is similar to that of previous bills, but there are some new elements that appear to be creating problems rather than broadening support. In essence, AB 2 would allow a defendant eligible for bail to be freed after he or she paid a 10 percent premium to the court and promised to pay the other 90 percent if he or she failed to appear for trial. If the defendant returns, the premium is refunded.

Under the current system, a defendant posts the 10 percent with a bail-bond agent, and the agent insures the remaining 90 percent. The 10 percent is not refunded, even if the person is later acquitted. That portion represents the agent's fee.

In addition to refundable bail, this year's bill contains provisions that make bail jumping a separate offense and that tighten up the post-conviction requirements for bail. Judges will also be able to impose additional conditions before granting pre-trial release. Ironically, some of these features are making both liberals and conservatives nervous.

AB 2 would virtually eliminate the bail-bond industry from the criminal justice scene, so the industry's concern is understandable. It geared up for a major battle after Governor Brown used his state-of-the-state address to proclaim his desire for bail reform: "Thousands and thousands of people languish in the jails of this state, even though they have been convicted of no crime," Brown said in urging adoption of a system similar to the federal courts' program.

Tony Kline, Governor Brown's legal affairs adviser, insists that the bill was not generated by any animus toward bail bondsmen. "The focus is on thousands of people languishing unnecessarily in county jails who are victims of the current system," Kline says. "We are not trying to hurt bail bondsmen; we are trying to help people who are prejudiced by a system that makes no sense, serves no purpose and ought to be changed."

Kline admits that the Berman bill does not end the discrimination inherent in the cash bail system, but it diminishes the inequities. "Ultimate reform is to eliminate cash entirely and find alternative constraints," Kline says, but he does not expect that to happen soon.

Court challenge

Supporters of AB 2 contend that the bail system is obsolete — not only because it discriminates against the poor and minorities but also because it invests bail bondsmen with inordinate power to decide who will be left in jail and who will not. Those who can afford their services are released; those who cannot remain in jail.

This interpretation is currently being examined in the state Supreme Court. The case before it *(Van Atta v. Scott)* challenges the cash bail system in an *amicus curiae* brief filed by the State Bar of California. Judge Joseph Kennedy of the San Francisco Superior Court has held that the existing system of pre-trial release and detention is prohibited by

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the due process clause of the federal Constitution and by Article 1, Section 13 of the California Constitution. The plaintiff argues that the bail bond system violates the due process and equal protection clauses.

"On a certain level," Kline says, "the bail system is a device whereby a tax is imposed for being arrested on people (who are) least able to pay it, for the benefit of a very small group of people who are, in effect, extracting profit from the poor in our society. It is basically a tax not levied by the state — it is a private tax on the poor."

Backers of the bill cite jail population statistics as evidence that AB 2 will reduce jail costs. As of September 1978, county jails in California held 27,362 persons, and 52 percent — more than 14,000 — were awaiting trial and presumed innocent. Many of them were not bailable, but many were there because they couldn't raise the 10 percent fee for the bondsman. Cost to a county to feed and house each prisoner is about $20 a day.

AB 2 can make money as well as save it, Berman says. The 10 percent fee would go to the court, not to the bail industry, and such fees could earn interest. AB 2 does not provide any appropriation to local governments for administrative costs incurred, but Berman says these could be covered easily with a portion of the fees paid.

The industry disagrees; it says counties would have to spend $250 million a year to replace the bail system now in effect. In addition, the industry provides employment for 5,000 persons and yields $700,000 a year in taxes, according to Gerald Desmond, lobbyist for the California Advisory Board of Surety Agents.

Decisive issues

Aside from the question of cost, there are several issues dividing bail reforms and the bail-bond industry. Among them:

• ***Failure to appear (FTA).*** The bonding industry claims that, under refundable bail systems, many more defendants fail to appear for their court dates. It cites its own statistics to support this contention. But in testimony before the Assembly Criminal Justice Committee, Los Angeles District Attorney Brian Van de Kamp disagreed. One of AB 2's sponsors, Van de Kamp says FTA rates are not significantly increased when a 10 percent refundable bail system is used. He quoted a 1975 study by the National Center for State Courts, which concluded, "There is no distinct pattern of lower FTA rates for any particular form of release."

• ***Death of an industry.*** Bail bonds are big business in California, involving 1,000 bondsmen licensed and regulated by the State Insurance Commission. The face amount of bonds written in 1978 was $300 million; industry receipts were about $30 million.

The Advisory Board of Surety Agents is supported by three major companies that handle about 80 percent of the penal liability in California: Associated Bond and Insurance Company, an affiliate of National Auto; Amwest Bond and Insurance Company; and Surety Insurance Company of California. These are the major surety bond companies, but there are several smaller firms. These companies are underwriters; they provide the collateral and share the 10 percent fee charged by the bondsmen.

Lobbyist Desmond does yeoman service for his bonding clients. In his first year as a lobbyist for the industry, a bail-bond bill sponsored by former Assemblyman William Bagley, got out of committee to the Assembly floor — where it garnered all of 14 votes. Since then, for a variety of reasons, none of the perennial bail-reform measures has even gotten out of committee. Some observers say that bail bondsmen are important sources of political contributions and support, and the bail bondsmen's advisory board makes generous contributions to select members of both parties.

District Attorney Van de Kamp is more subtle: "Perhaps naively, we will assume that it has not been the economic power of bail-bond lobbies which has thwarted changes our system has required for years, but the belief that the bail bondsman system did its job so well that it was worth its rather excessive costs."

But bail reform has not had a powerful constituency behind it in past years. According to Kline, the media generally have ignored the issue so that the average citizen is uninformed. Bagley recalls that when he got interested in bail reform, it was he and a small group of law students against an entrenched industry. He says, "In some communities the bail bondsman is a political force. The bail industry uses its forces well."

Despite his past successes, Desmond avoids overconfidence. "We have undertaken a statewide education program to educate people what the system will be if the bill passes," he says. According to Desmond, AB 2 will close down the surety bond business in California. "The bonding companies will stop accepting bonds the day the Governor signs the bill," he says. "It's an actuarial business — you have to have some good risks to offset losses." He charges that with a refundable 10 percent bail, only bad risks would come to bail bondsmen.

Advisory board executive director William Sanbach says the bonding industry earns its money: "On $10,000 bail the agent gets $1,000 from you. If you default, I pay the court. A large part of the premium goes into a loss reserve in case I have to look for you and bring you back."

Sanbach says that in 1978, one-tenth of 1 percent of felony defendants became fugitives and their bonds had to be paid off. "Last year that amounted to about $10 million," he recalls, or one-third of the total premiums went back into forfeitures. AB 2 supporters claim that that figure is greatly exaggerated.

Both Sanbach and Desmond stress that in California the good risk is OR'd (released on own recognizance) or cited and released. What's left, they say, the industry gets. They concede that 20 or 30 years ago AB 2 would have had some justification, because then the primary means of getting out of jail was bail. Extensive OR programs or citation release did not exist as they do now.

• ***Discrimination against the poor.*** Replying to Kline's charge that poor people are the victims of the current system, Desmond says, "There are people in jail who are poor, but they are not in jail *because* they are poor. They are there because a judge decided that he did not want them on the street without a guarantee."

Yet, in a bail reform hearing before the Assembly Committee on Criminal Justice in 1977, Sanbach was questioned by Assemblyman Mel Levine: "If a guy has the same rap sheet as the guy you are talking about who is poor and is in jail, and that (first) guy has access to a healthy checkbook, that guy is going to be out of jail, is he not?" Sanbach's response: "He probably is, yes."

• ***Conditional release.*** The complexities of AB 2 go beyond the rich man-poor man theme, according to Peter Jensen, consultant to the Assembly Criminal Justice Committee. For example, there are features that deal with the imposition of conditions other than money to ensure a defendant's return. And once a person is convicted of a felony, the right to bail is wiped out, and the judge can deny bail during the appeal process.

The conditional release was intended as a device to help those without money. But both liberals and conservatives in the legal profession and in law enforcement are concerned with the implications of this approach. American Civil Liberties Union lawyers, for example, are touchy about "conditions" because they believe this invites judges to im-

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pose unconstitutional restraints for pre-trial detention. Law enforcement spokesmen object because they believe the non-cash conditions are not enforceable and that there is no mechanism in the bill for imposing penalties on individuals who violate the conditions.

The key to success

All of the bill's supporters recognize that success or failure hinges upon the support of law enforcement groups. Spokesman for the California Peace Officers Association (CPOA) is Al Le Bas. His organization would be an invaluable ally, but it is cool to AB 2. In January the bill was explained to CPOA's law and legislative committee, which includes members from nearly all segments of the criminal justice system — police chiefs, sheriffs, the State Department of Justice, Correction and the Highway Patrol. On important legislation the committee first takes a position, then goes to the executive committee of the CPOA for ratification.

The 20-member executive committee includes police chiefs, sheriffs, Highway Patrol representatives and the special agent in charge of the FBI office in Sacramento. Late in January the law and legislative committee invited Kline, Barbara Moore (senior legislative consultant in Berman's office) and the industry's Sanbach to present their views.

"You wouldn't think they were talking about the same studies," Le Bas remembers.

Afterwards, his committee voted "D" (for disapproved) on AB 2, but softened the rejection with "in its present form." A few days later the executive committee ratified the decision. "Unless the bill is dramatically changed, our position is going to be one of opposition," Le Bas promises. In previous years reform bills were given lukewarm support from CPOA because of the influence of the district attorneys. Now the DAs are split off from the CPOA and their association will take its own position.

The CPOA has no qualms about the 10 percent refundable bail, Le Bas says. "The big issue is the cost impact on local government." This concern continues despite Moore's report that Assemblyman Berman is prepared to set aside a portion of the defendant's bail premium to meet these expenses.

Law enforcement personnel also worry about the provision that makes bail jumping a punishable offense. If a defendant is charged with a felony, for example, and willfully fails to appear, that person then faces a second felony charge.

Le Bas says that, based on his own 30-year experience as a deputy sheriff in Los Angeles County, he doesn't think the threat of a concurrent sentence will deter bail jumpers. Besides, police don't want to inherit the job of chasing down bail jumpers, he says. While he agrees that law enforcement brings in more bail jumpers than the bail bondsmen, bail jumpers are usually picked up on routine traffic checks. "We don't go out in the middle of the night serving misdemeanor warrants," he says.

"If you asked any street-wise con out there who he'd rather have on his case, if he's a bail jumper — a bail bondsman or a cop — he'd say, 'Give me a cop anytime. Those other suckers, they'll get you back one way or another.' "

The real risks

Los Angeles and most other populous counties have effective OR release programs, Le Bas says. "As a practical matter, if a guy can't make it out on an OR and he can't get a bail bondsman to pony up for the 10 percent — then he doesn't belong out on the street anyway. He's a real risk to somebody."

If those behind AB 2 are really concerned about innocents in jail, Le Bas says, let a prorated share — say eight percent of the bail — be returned to those who are not charged or who are OR'd after they have posted bail. Let them propose that in a separate bill. We'd support that."

The California Judges' Association, the District Attorneys' Association and the California Attorneys for Criminal Justice are waiting to take positions until they have seen an amended version of AB 2 that is being hammered out by Berman, McCarthy, Kline, Van de Kamp and others. But Le Bas of the CPOA is not optimistic about prospects of an eventual compromise: "What do they call it in the divorce racket? We have irreconcilable differences."

SIGNIFICANT COURT ACTIONS

Tanner again

In a surprise move, the state Supreme Court February 8th set aside its own controversial decision in the *Tanner* "use-a-gun, go-to-prison" case and scheduled a rehearing for March 7th in Sacramento. The order was signed by Justices Stanley Mosk, William P. Clark, Frank K. Richardson and Wiley W. Manuel. The pivotal vote was cast by Mosk, who had previously signed the lead opinion in the original *Tanner* case.

A majority of state legislators had requested a rehearing, and the state attorney general's office argued that the justices didn't count the votes properly in the case. That was because Chief Justice Rose Elizabeth Bird differed from those who signed the lead opinion on the grounds for throwing out the mandatory prison legislation. Bird and Justices Mathew Tobriner and Frank Newman did not sign the rehearing order.

$1 billion decision?

In a unanimous ruling, the state Supreme Court struck down the provisions of last year's Proposition 13 "bailout" legislation freezing salaries of governmental workers. The court said that the provisions violated federal and state prohibitions against impairment of contracts, as well as the home-rule guarantees of the state constitution.

As a result of the decision, pay raises totaling some $1 billion could be unlocked for the 1.1 million employees of cities, counties and special districts. These include increases negotiated by the employees prior to the effective date of the 1978 legislation — plus any hikes that may now be negotiated. The court's decision, written by Justice Mosk, cast aside that provision of the law stating that local governments could not receive state bailout funds if they granted pay hikes.

The decision was rendered in a Sonoma County case similar to many other challenges of the bailout provision brought by public employees throughout California. Some government officials indicated that layoffs may result from the court's action. This is because the bailout law was crafted to minimize reductions of force and maximize local-government services.

The key statement in Mosk's opinion: "While the state may not have been under an obligation to distribute state funds, . . . it could not require as a condition of granting those funds that the local agencies impair valid contracts to pay wage increases."

Howard Jarvis called the decision "nuts."

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Battle of the titans

The major issue before the state Legislature during the first two months of 1979 had nothing directly to do with current California problems. At stake was a resolution embodying Governor Jerry Brown's call for a national constitutional convention, if necessary, to require a balanced federal budget. Brown was attempting to ride this issue to the White House, and he succeeded in isolating himself among major Democratic politicians as the candidate willing to enter Washington carrying a budgetary meat ax. While liberal politicians and newspapers in the East painted Brown as a villain willing to risk the Bill of Rights for political advantage, he was challenged directly in the Legislature by the second most powerful man in state government, Assembly Speaker Leo T. McCarthy.

A rare appearance

Brown did remarkably well in the early going, getting his plan (SJR2 by Senator Jerry Smith) approved by the Upper House by a vote of 24 to 14. He then made a rare personal appearance before the Assembly Ways and Means Committee to pitch for approval of the resolution. (Howard Jarvis testified in opposition.) Brown's presentation was generally praised by Republicans, panned by Democrats. Brown put maximum pressure on committee Democrats to break the speaker's iron hand on the committee, and there was speculation that McCarthy would lose the speakership if the resolution were approved.

The pivotal vote came February 22nd on a measure identical to SJR2, and McCarthy's forces defeated Brown, 12-8. The spotlight then fell on a milder resolution by Assemblyman Tom Bane calling for a constitutional amendment to balance the budget without any reference to a constitutional convention. The question was whether passage of the Bane plan would make it appear that Brown won at least a partial victory.

The Ways and Means vote clearly was a victory for the speaker. He maintained his control over the most important committee in his house, and he emerged as a strong spokesman for liberal Democrats who oppose the convening of a constitutional convention. It enhanced his chances to run as the Democratic nominee for governor in 1982.

But how big a defeat was it for Governor Brown? It was an opportunity for disaffected Democrats to put Brown in his place, and it made him look less than masterful in front of a California audience. But what of the rest of the nation, especially those Eastern voters who will be deciding between Brown, President Carter and other candidates barely a year from now? Did it diminish Brown's reputation as the reckless budget-cutter who will pare government spending to the bone and halt inflation cold? Probably not, and that's the basic message the Governor has been trying to convey. The constitutional convention was merely the best available tool.

On the fiscal front

While the constitutional convention battle was being waged, there were several developments on the California fiscal front:

- **Legislative Analyst William Hamm** described Brown's $20.3 billion budget as "tight by any test" but called for net reductions totaling $416 million. Hamm's annual budget analysis required 1,656 pages, longest in history by far.
- **The Legislature** moved at a racehorse pace to repeal an $18 million anti-litter tax on business enacted almost two years ago.
- **The Senate Governmental Organization Committee** supported a plan by State Treasurer Jesse M. Unruh taking the estimation of state revenues out of the hands of the Department of Finance.
- **In another economy move, the Assembly** passed a resolution by Assemblyman Mike Gage limiting the number of bills each lawmaker can introduce in a two-year session to 40.

Senate (25D, 14R)	SCA 2 AB 143 SB 82A SB 82B SB 373	SJR 2 SJR 5 SB 22 SB 149 SR 13		SCA 2 AB 143 SB 82A SB 82B SB 373	SJR 2 SJR 5 SB 22 SB 149 SR 13
Alquist (D)	YYYYY	NYYYY	Nejedly (R)	YYNYY	YYYYN
Ayala (D)	YYYNY	YYYYY	Nielsen (R)	YYYYY	YYNYY
Beverly (R)	YYYYY	YYYYN	Nimmo (R)	YNY*Y	YYNYY
Briggs (R)	Y*Y**	YNNY*	Petris (D)	NYN*N	N*YY*
Campbell (R)	Y*Y**	Y*NY*	Presley (D)	YYNYY	YYYYY
Carpenter (D)	YY*YY	YYYYY	Rains (D)	YYNYN	YYYYY
Craven (R)	YYYYY	YYYYY	Richardson (R)	YNY*Y	Y*NY*
Cusanovich (R)	Y*YNY	YYYYY	Robbins (D)	YYN*Y	YYYY*
Dills (D)	YYYNY	NYYY*	Roberti (D)	NYNYY	N*YY*
Foran (D)	YYNYN	N*YYY	Rodda (D)	YYNYY	NYYY*
Garamendi (D)	YYNYY	NYYY*	Russell (R)	YYY*Y	YY*YY
Garcia, A. (D)	YYYYY	N*YYY	Schmitz (R)	YNY*Y	YNNY*
Garcia, M. (R)	Y*YYY	YYNYY	Sieroty (D)	NYNYN	NYYYN
Greene (D)	*YNYY	**YYY	Smith (D)	YYNYY	YYYY*
Holmdahl (D)	YNYY*	YYYYY	Stiern (D)	YNNYY	YYYYY
Johnson (R)	Y*YYY	YY*YY	Vuich (D)	YYYYY	YYYYY
Keene (D)	*YNYY	NYYYY	Watson (D)	NYNYY	NYYYN
Marks (R)	NYN*Y	NYYYN	Wilson (D)	YNYYY	YYYYY
Mills (D)	YYNY*	NYYYY	Zenovich (D)	*Y***	YY*Y*
Montoya (D)	YYYYY	N*YYY			

VOTING RECORDS

Listed here are the votes of legislators on recent major roll calls through mid-February. Votes selected involve issues of major importance and issues on which there was a major division of opinion, or both.

Y - Yes **N - No**
*** — Absent or not voting**

A ⅔ vote is required for urgency measures, constitutional amendments, and appropriations.

Assembly: 41 votes required for passage of bills needing a simple majority. (⅔ = 54 votes)

Senate: 21 votes required for passage of bills needing a simple majority. (⅔ = 27 votes)

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Assembly (50D, 30R)	AB 21 AB 143 ACR 3		AB 21 AB 143 ACR 3		AB 21 AB 143 ACR 3		AB 21 AB 143 ACR 3
Agnos (D)	Y Y Y	Ellis (R)	N Y Y	Kelley (R)	N N Y	Perino (D)	Y Y Y
Alatorre (D)	Y Y Y	Felando (R)	N Y Y	Knox (D)	Y Y N	Priolo (R)	Y Y Y
Bane (D)	N Y N	Fenton (D)	Y Y N	Lancaster (R)	Y Y Y	Robinson (D)	N Y N
Bannai (R)	N Y Y	Filante (R)	Y Y Y	Lehman (D)	N Y Y	Rogers (R)	Y Y Y
Bates (D)	Y * Y	Frazee (R)	N Y Y	Leonard (R)	N N Y	Roos (D)	Y Y N
Bergeson (R)	N Y Y	Gage (D)	Y Y Y	Levine (D)	Y Y Y	Rosenthal (D)	Y Y N
Berman (D)	Y Y Y	Goggin (D)	Y Y Y	Lockyer (D)	Y Y N	Ryan (R)	Y Y *
Boatwright (D)	Y Y N	Greene (D)	Y * N	Mangers (D)	Y Y Y	Statham (R)	N * Y
Bosco (D)	Y Y Y	Hallett (R)	N N Y	McAlister (D)	Y Y N	Stirling (R)	Y Y Y
Brown, D. (R)	N N Y	Hannigan (D)	Y Y Y	McCarthy (D)	Y Y *	Tanner (D)	Y Y N
Brown, W. (D)	Y Y *	Harris (D)	N Y Y	McVittie (D)	Y Y *	Thurman (D)	Y Y Y
Calvo (D)	Y Y Y	Hart (D)	Y Y Y	Mello (D)	Y Y Y	Torres (D)	Y Y *
Chacon (D)	Y Y N	Hayden (R)	Y Y Y	Moore (D)	Y * Y	Tucker (D)	Y Y Y
Chappie (R)	Y Y Y	Hayes (R)	N Y Y	Moorhead (R)	Y Y Y	Vasconcellos (D)	Y Y N
Cline (R)	N N Y	Hughes (D)	Y Y N	Mori (D)	Y Y Y	Vicencia (D)	Y * *
Costa (D)	Y Y Y	Imbrecht (R)	Y Y Y	Mountjoy (R)	N N Y	Waters, M. (D)	Y Y N
Deddeh (D)	Y Y N	Ingalls (D)	Y Y N	Naylor (R)	Y Y Y	Waters, N. (D)	N Y Y
Duffy (R)	Y Y N	Ivers (R)	N N Y	Nestande (R)	Y Y Y	Wray (D)	Y * Y
Egeland (D)	Y Y Y	Johnson (R)	Y N Y	Nolan (R)	N N Y	Wyman (R)	N N Y
Elder (D)	Y Y Y	Kapiloff (D)	Y Y *	Papan (D)	N N N	Young (D)	Y Y Y

Senate

SCA 2 (Robbins) — Proposed constitutional amendment to prohibit state courts from requiring busing of students to achieve racial integration. Passed 31 - 5.

AB 143 (M. Waters) — Extends law allowing school districts to hire temporary instructional aides without civil-service competition. Passed 28 - 6.

SB 82A (Garamendi) — Reorganizes the California-Nevada Tahoe Regional Planning Agency. Amendment to abolish the separate California Tahoe Regional Planning Agency. Adopted 20 - 17.

SB 82B (Garamendi) — Reorganizes the bi-state Tahoe Regional Planning Agency. Passed 26 - 3.

SB 373 (Nejedly) — Repeals new tax to finance litter-control and solid-waste recycling programs. Passed 30 - 4.

SJR 2 (Smith) — Asks Congress to call a constitutional convention for consideration of an amendment to the United States Constitution requiring a balanced federal budget. Adopted 24 - 14.

SJR 5 (Carpenter) — Asks Congress to enact a law providing for reimbursement of state and local government for all federally mandated programs. Passed 29 - 2.

SB 22 (Foran) — Gives the California Housing Finance Agency priority over all other state agencies for the receipt of federal funds to develop low-income housing. Passed 29 - 7.

SB 149 (Smith) — Overrules the state Supreme Court's *Tanner* decision, striking down the "use-a-gun, go-to-prison" law. Passed 39 - 0.

SR 13 (Mills) — Imposes a dress code on all persons entering the Senate chamber. Adopted 22 - 5.

Assembly

AB 21 (Levine) — Appropriates $365,000 for settlements of a negligence claim against the California Highway Patrol. Passed 58 - 22.

AB 143 (M. Waters) — Extends a law allowing school districts to hire temporary instructional aides without civil-service competition. Passed 63 - 11.

ACR 3 (Gage) — Limits each legislator to the introduction of 40 bills during a two-year session. Passed 54 - 19.

ROSTRUM

The *Journal* welcomes brief letters from readers.

Insurance industry protest

I was surprised to read Kit Stolz's article, "The Insurance Industry Versus the California FEPC" (*CJ*, January 1979). The article, which discussed the hiring by the Fair Employment Practice Commission of an outside advocacy organization to investigate the insurance industry, contains numerous omissions or errors that result in an anti-industry bias.

The article makes little effort to present this issue fairly. Support of the FEPC and Women Organized for Employment (WOE) receives more than 30 lines of direct quotation, while industry representatives receive six. The following are but a few examples of the concerns we have with the article:

- The article alleges that industry arguments that the investigation violated standards of due process and was prejudicial were dismissed by Federal District Court Judge Manuel Real. In fact, Judge Real issued a permanent injunction forbidding any participation by WOE in such investigations and forbidding disclosure of confidential information.
- WOE representative Myan Baker is quoted as saying that great efforts were made to assure the insurance industry that this investigation was impartial. In fact, the industry was not notified of this investigation for almost 14 months after its inception — not an action which encourages faith in the investigators' motives or fairness.
- The article fails to note that Los Angeles Superior Court Judge Charles Phillips, in a suit brought by this association and 15 insurance companies, ruled that the FEPC did violate requirements of confidentiality.
- The article erroneously alleges that the insurance industry is fighting this investigation because it "will be liable for thousands of dollars in settlements . . . if a pattern of sex discrimination is proven." This FEPC investigation would involve no settlement costs or fines; if offenders are, in fact, found, the FEPC simply would endeavor to eliminate the practice through conciliation — as the article indicates in a later paragraph.
- Another fact also is ignored — the great cost to both taxpayers and private industry which is attached to this government probe. Much of the information sought by the FEPC was already on file with the Federal Equal Employment Opportunities Commission and was furnished by it to the FEPC under an agreement to maintain confidentiality.
- Finally, a headline which reads "Is Discrimination Profitable?" is a quotation from an attorney involved in litigation totally unrelated to employment practices of the insurance industry; the use of isolated examples of offenders to tar an entire industry; and particularly the use of statistics gathered in 1975 to depict current employment patterns which are changing rapidly — are all patently unfair.

We believe the FEPC would better fulfill its mission by pursuing its extensive backlog of specific, individual complaints of discrimination. Instead, the FEPC has engaged in a sweeping investigation conducted in consort with highly biased advocacy groups which, as the preliminary report bluntly stated, would orchestrate FEPC's conciliation efforts with "large scale pressure" upon the companies involved through community activism. The industry resistance was motivated by a belief that a stand must be taken to prevent this sort of illegal conspiracy between a governmental agency and a nongovernmental group pursuing private goals.

LEWIS KELLER
Executive Vice President
Association of California
Life Insurance Companies

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CHARTING THE LEGISLATURE

The following is a list of significant bills pending before the Legislature on February 21st:

SUBJECT	BILLS	DESCRIPTION	STATUS
BUDGET	SB 190 (Rodda) AB 242 (Boatwright)	Appropriates $20.3 billion for the support of state government for fiscal year 1979-1980.	*SB 190 is in the Senate Finance Committee. AB 242 is in the Assembly Ways and Means Committee. Budget subcommittee hearings are in progress.*
BUSINESS INVENTORIES	SB 7 (Smith) SB 54 (Dills) AB 61 (Cline) AB 66 (Lockyer) and others	All of these measures would repeal the business inventory tax.	*Senate bills are pending in the Senate Revenue and Taxation Committee. Assembly bills are in the Assembly Revenue and Taxation Committee.*
CRIMINAL JUSTICE	AB 163 (McCarthy) AB 201 (Naylor) *SB 140 (Rains)* *SB 149 (Smith)*	All of these measures would overrule the Supreme Court's *Tanner* decision, which struck down the "use-a-gun, go-to-prison" law.	*All Assembly bills and SB 149 are pending in the Assembly Criminal Justice Committee. SB 140 is in the Senate Judiciary Committee.*
EDUCATION	SB 234 (Dills)	Increases state funding of public schools by approximately nine percent.	*Senate Education Committee.*
	SB 252 (Alquist) SCA 13 (Alquist)	Makes Board of Regents of the University of California the governing board of all public higher education institutions.	*Senate Education Committee.*
GAS STATIONS	SB 203 (Alquist)	Prohibits oil companies from owning or operating service stations after 1980.	*Senate Energy and Public Utilities Committee.*
HEALTH CARE	SB 325 (Ayala)	Would prohibit minor from obtaining an abortion without parental consent.	*Senate Judiciary Committee.*
	AB 157 (Berman)	Would guarantee patients and former patients access to their medical records.	*Assembly Health Committee.*
MARIJUANA	AB 315 (Brown)	Revises penalties for growing marijuana.	*Assembly Criminal Justice Committee.*
PRODUCT LIABILITY	AB 149-154 (Stirling) SB 222-227 (Robbins) and others	All of these measures accomplish major revisions of current product liability laws.	*Assembly bills are pending in the Assembly Judiciary Committee. Senate bills are in the Senate Judiciary Committee.*
PUBLIC ASSISTANCE	SB 1 (Greene)	Grants retroactive cost-of-living increases to welfare recipients.	*Senate Finance Committee.*
PUBLIC EMPLOYEES	AB 6 (Deddeh) SB 91 (Alquist)	Both would appropriate an unspecified amount for retroactive state employee cost-of-living salary increases.	*AB 6 is in the Assembly Public Employees and Retirement Committee. SB 91 is in the Senate Public Employment and Retirement Committee.*
SPECIAL DISTRICTS	SB 29 (Campbell) SB 31 (Nejedly) AB 96 (Chappie) SB 189 (Craven)	SB 29 appropriates an additional $90 million in state funds to special districts. SB 31 would give such districts an extra $150 million. AB 96 appropriates an unspecified amount to special districts. SB 189 provides for the final allocation of state funds to be made to special districts before March 1st.	*SB 29 was defeated in the Senate Local Government Committee. SB 31, AB 96, and SB 189 are pending in the Assembly Local Government Committee.*
WATER RESOURCES	SB 200 (Ayala) AB 303 (Lehman)	Authorizes the construction of the Peripheral Canal, the Mid-Valley Canal, and other water projects.	*SB 200 is in the Senate Agriculture and Water Resources Committee. AB 303 is in the Assembly Resources, Land Use and Energy Committee.*

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By LEO RENNERT

Requiem for a delegation

Shortly after his November election victory, freshman Democrat Robert Matsui of Sacramento passed the word to his new colleagues in the California congressional delegation that he'd like to serve on the House Appropriations Committee. Sacramento's other freshman congressman, Democrat Vic Fazio, had similar ambitions. In an era of fiscal austerity with more than the usual elbowing for federal dollars, Appropriations is where the action promises to be. Also, with a big turnover in the delegation, there just happened to be two California "vacancies" on the panel that controls the gamut of federal spending.

BUT NOVEMBER'S fond hopes became laughably quixotic in January. Since Los Angeles freshman Julian Dixon also was eyeing Appropriations, it was evident something had to give. To simplify matters, Matsui stepped aside, hoping to give Fazio a clear shot. As reward for his sacrifice, Matsui expected to end up on the Commerce Committee. The Democratic delegation, at a pre-session caucus, duly ratified this arrangement and pledged to do its utmost to persuade House leaders to give California a fair share of choice committee assignments.

When the dust settled, however, the delegation had taken its biggest beating since California became the most populous state. Fazio struck out. So did Matsui — even with his fallback option. Dixon barely managed to get on Appropriations, but California's strength on the key panel was trimmed back. With 10 percent of the House membership, California now has only three lawmakers on the 54-member committee — Dixon, Democrat Ed Roybal of Los Angeles and Republican Clair Burgener of Rancho Santa Fe. Fazio had to settle for Armed Services and Matsui, after striking out three times, ended up with Judiciary as his major committee.

The Fazio-Matsui episode was just the start of a general California debacle. Besides losing one seat on Appropriations, the Democratic delegation lost another on Commerce; still another on Banking, which has jurisdiction over urban programs, and two on Foreign Affairs. At a time when foreign markets are becoming increasingly important to California's economy, not a single Democratic lawmaker from the state appears on the Foreign Affairs Committee roster.

California's Republican contingent is not doing much better. None of its seven freshmen managed to break into a super-committee like Appropriations, Ways and Means, Budget or Rules. That doesn't bode well for GOP chances to hold on to last November's congressional gains in the state.

Still, it was the 25-member Democratic delegation that suffered the roughest treatment, including a stinging rebuke from Speaker Thomas P. O'Neill Jr. After the retirement of veteran Fresno Democrat B. F. Sisk, the Californians tried to make sure that one of their own would take over his seat on the Rules Committee, which controls the flow of all major legislation. In hopes of resolving conflicting ambitions, the delegation — by an overwhelming vote — chose Jerry Patterson of Santa Ana over Anthony Beilenson of Los Angeles. O'Neill, however, disregarded the delegation's position, publicly chided it for even presuming to tell him what to do, and picked Beilenson. To add salt to the wound, the speaker treated the New York delegation with much greater deference by accepting its choice of Leo Zeferetti of Brooklyn for an opening on Rules. California Democrats may still have a seat on Rules; the crucial difference is that Beilenson owes no loyalty or gratitude to his delegation, only to the speaker and to Rules Committee Chairman Richard Bolling of Missouri, who had taken him under his wing.

California's internal split in the Patterson-Beilenson fight for Rules was repeated when Henry Waxman of Los Angeles pulled an upset in the Commerce Committee and defeated a leadership-backed senior member, Democrat Richardson Preyer of North Carolina, for the chairmanship of the health and environment subcommittee. This is the panel where key battles over national health insurance, hospital-cost containment and clean-air rules will be fought. Waxman pulled off his coup with backstage help from Senator Edward Kennedy and liberals in other delegations. Preyer had the backing of the only other California Democrat on Commerce — Lionel Van Deerlin of San Diego.

Surveying the wreckage, the delegation appointed a three-member damage-assessment team, then began to debate something it could really get its teeth into — the menu and price of its weekly breakfast in the Speaker's Dining Room.

Some Californians argue it was unrealistic to expect a delegation that mirrors the state's modern-day divisions to display coherent strength and unity. But there's more to it than that, including the continuing friction between Majority Leader Jim Wright of Texas and San Francisco Congressman Phillip Burton, who still harbors leadership ambitions. Burton is the sharpest California operator in the House, but there is enough anti-Burton sentiment in his own delegation to make it impossible for him to become a rallying point for the splintered Californians. Wright and others in the leadership, aware of these divisions, have been quite effective in wooing away several Californians who care more about personal advancement than the delegation's interests or Burton's ambitions.

ALSO, CALIFORNIA is hobbled by the loss of several key veterans. There is little rapport between the new delegation chairman, Harold Johnson of Roseville, who is in his seventies, and younger members. Said one disappointed freshman: "If I'd known a couple of months ago what's happening around here, I would have skipped the delegation and made all my deals directly with the House leadership."

In the Senate, the California picture is less bleak. Republican S. I. Hayakawa has moved up to the prestigious Foreign Relations Committee. His senior colleague, Democrat Alan Cranston, has retained his No. 2 leadership post of majority whip and picked up the chairmanship of a key subcommittee that handles legislation affecting banks and other financial institutions.

But these are individual success stories. As a political force to be reckoned with on Capitol Hill, the California delegation is dead.

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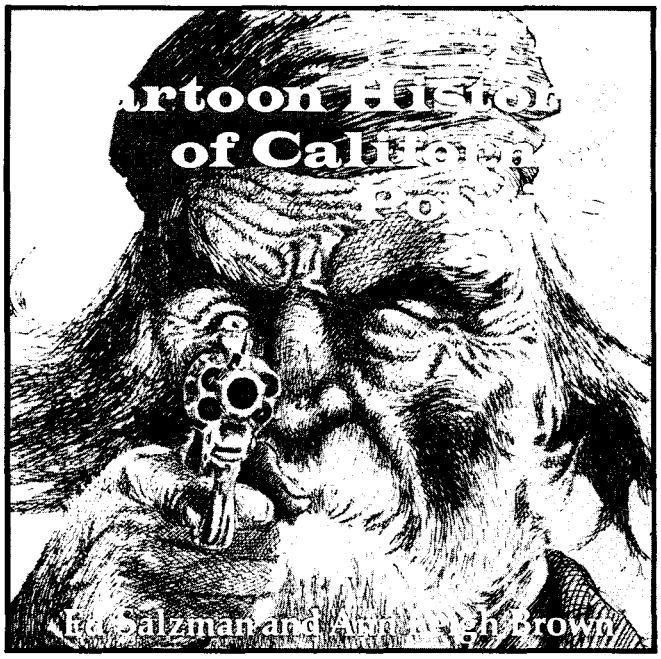

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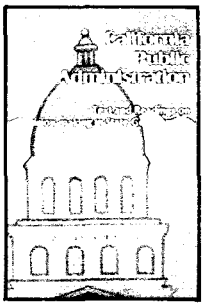

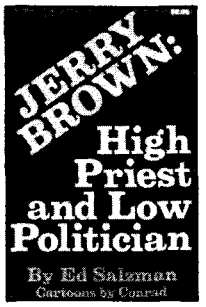

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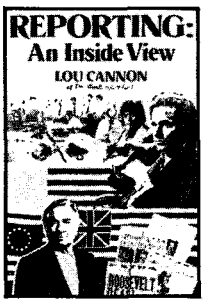

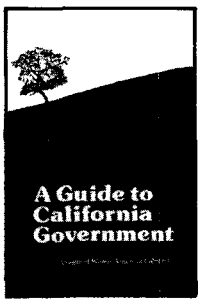

The American people have not been governed by political theory, but purely by opportunism . . . Because of this plasticity we have been spared violent and bloody convulsions.

— Arthur M. Schlesinger Sr.

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